(18,956.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 50.

FERNAND BONIN, VALCOUR BONIN, ET AL., PLAINTIFFS IN ERROR,

vs.

THE GULF COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a United States of America, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday of November, 1901, and held in the Court room of said Court, in the city of New Orleans.

Before the Honorable Don A. Pardee, the Honorable A. P. McCormick and the Honorable David D. Shelby, United States Circuit Judges for the Fifth Judicial Circuit.

HEIRS OF GONSOULIN, Plaintiff in Error,

versus No. 1131.

THE GULF COMPANY, Defendant in Error.

Be it remembered that heretofore, to wit: on the 26th day of February, 1902, a transcript of the record of the above styled cause from the Circuit Court of the United States for the Eastern District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit in the words and figures following, to wit:

1 United States of America, Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

THE HEIRS OF GONSOULIN, Plaintiffs in Error,

versus No. 12,760.

THE GULF COMPANY, Defendant in Error.

Branch K. Miller, Esquire, and David Todd, Esquire, for the Heirs of Gonsoulin, Plaintiffs in Error.

Farrar, Jonas & Kruttschnitt, Esquires, for the Gulf Company, Defendant in Error.

Writ of Error to the Circuit Court of the United States for the Eastern District of Louisiana (New Orleans Division), from the United States Circuit Court of Appeals for the Fifth Circuit, returnable within Thirty (30) Days from the Twenty-Eighth (28th) Day of January, A. D. 1902, at the City of New Orleans, State of Louisiana.

TRANSCRIPT OF RECORD.

2 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Transcript of Removal from 24th Judicial District Court, Parish of St. Mary.

Filed in U. S. Circuit Court Nov. 7th, 1898.

Transcript.

HEIRS OF FRANCOIS GONSOULIN, AND WIFE, DECEASED,

vs. No. 10,129.

THE GULF COMPANY.

From the 24th Judicial District Court of Louisiana to the Circuit Court of the United States for the Eastern District of Louisiana.

To the Honorable, the Judge of the 24th Judicial District Court, in and for the Parish of St. Mary, State of Louisiana:

The petition of Martial Bonin, Valcourt Bonin, Ovignac Bonin, Amanthe Toffier, widow and Mathilde Broussard, widow, the grandchildren and heirs of Francois Gonsoulin and Marie Louise Celeste Delagoutrais, his wife, both now deceased, and former residents of the Parish of St. Martin, and of Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel, and Azelia Bonin, wife of Leon Pavy, and Arsene Bonin, wife of Ulienor Dugas, and Corine Breaux, wife of Aurelian Breaux the great grandchildren and heirs of said deceased through their mother, Sylvanie Bienvenue, who was the daughter of Timoleon Bienvenue and Josephine Pepite Gonsoulin, who married said Bienvenue before she became the wife of Duperon Bonin; and of Despany Boussard, the father of Edward, Jule, Despany, Amelia and Pierre Broussard, issue of the marriage of their said father and Olivia Bonin, deceased, a great granddaughter of the said Francois Gonsoulin and his said wife; representing his said children who are minors, all said husbands herein joining their wifes in said suit, and all of your petitioners being residents of the Parish of Iberia, said State, with respect represents:

That they are the legal heirs of Francois Gonsoulin and his said wife, Marie Louise Celeste Delagoutrais, through their

3 mother and great-grandmother Josephine Gonsoulin by her marriages with Timoleon Bienvenue and Baptist Bonin, both now deceased, said Pepite Gonsoulin being the daughter of said Francois Gonsoulin and his said wife, deceased.

They show that they are for the reasons stated, entitled to recover and receive as heirs aforesaid all property real and personal of said deceased ancestors Francois Gonsoulin and his said wife.

That said Francois Gonsoulin and wife owned at their deaths, which occurred in St. Martin Parish, certain real estate which now belongs to your petitioners, and to the possession of which they are now entitled.

That said successions of Francois Gonsoulin and of his said wife owe no debts, and that they, petitioners, accept the successions and estate of said deceased transmitted to them through their deceased mother, &c.

Petitioners now show that said Francois Gonsoulin, their grandfather and his wife owned at their death, the right to a grant of land described as follows as per surveys and confirmation since made, to-wit:

A tract of land called Belle Isle, consisting of section nineteen (19), township seventeen (17) south, range eleven (11) east, nineteen hundred and eighteen and 75-100 acres. Section twenty-eight (28), township seventeen (17) south, range ten (10) east, nine hundred and seven and 63-100 acres. Section one (1), township eighteen (18) south, range ten (10) east, one hundred and thirty-seven and 76-100 acres. And section two (2), township eighteen (18) south, range ten (10) east, sixteen and 44-100 acres. All lying in the Parish of St. Mary, fronting on Wax Bayou and lying on the Atchafalaya Bay in the Southwestern Land District of Louisiana, Parish of St. Mary.

All said tract being contiguous and forming originally a grant from the Spanish government or concession therefrom during the time when Louisiana formed a part of the dominions of Spain in America, said grant or tract described containing in the aggregate twenty-nine hundred and eighty and 58-100 acres or thereabouts. Your petitioners show that the grant or concession above mentioned to the property described was originally made and allowed to Dantrive Dubuclet, Benoist de St. Clair, and the Francois Gonsoulin aforementioned, as grantees, about the year Anno Domini seventeen hundred and eighty-three (1783), all of said grantees then residing in the province of Louisiana.

Petitioners show that by legal and proper transfers by said

4 Dautrive Dubuclet and said Benoist de St. Clair and their heirs that the right and interest of the last two mentioned grantees and their heirs in and to said lands described have been and are now vested in your petitioners as heirs of Francois Gonsoulin and his said wife, said transfers having been made since the year eighteen hundred and eight (1808) when Louisiana was acquired by the United States of America.

Your petitioners further show that all said original grantees have been long since dead and that a patent has issued to the heirs of Francois Gonsoulin to the lands aforesaid from the government of the United States, after due recognition of their rights by the Commissioners of the Land Office of the United States.

Petitioners further show that their said rights to said lands are recognized in the Commissioner's reports now in the United States Land Office of the year eighteen hundred and seventy-five or about the year eighteen hundred and sevent-five.

Petitioners show that their claim by said grant and concession covering said lands dates back to the year seventeen hundred and eighty-three (1783) or thereabouts, and said concession was recognized and confirmed by the United States government after proper and legal surveys had defined the boundaries and segregated said grants.

Petitioners show that said land is now in the possession of and illegally detained and held by the Gulf Company, a body corporate organized under the laws of the State of New Jersey, domiciled in the State of New Jersey of which William C. Rowland of New Jersey is the President. That said Gulf Company is a non-resident of Louisiana and that it is necessary that a curator ad hoc be appointed for said company, on whom service hereof can be made.

Petitioners show that they are entitled to be declared the owners of said lands described (which are worth twenty-five thousand dollars) and that they should thereafter be placed in possession of said lands by proper orders and decrees as no sale, transfer or decree has divested their title to said lands or their right to recover the same.

Wherefore petitioners pray that a curator ad hoc be appointed to represent the absentee, the Gulf Company aforesaid, and for citation on said company through the curator ad hoc as the law provides and also for service upon any person now found occupying said lands or thereon through authority of the said Gulf Company, and petitioners pray that on trial hereof that they have judgment recognizing them as the heirs of Francois Gonsoulin and his said wife deceased, and as such entitled to be

placed into possession of their estates, real and personal, and for further judgment decreeing them to be the owners of the lands specifically described above called Belle Isle, and for a writ sending them into possession of their said property, and for all other necessary orders and decrees in the premises, and for general relief.

(Signed) TODD & TODD,
CHARLES A. O'NIELL,
Att'ys for Petitioners.

State of Louisiana,
Parish of St. Mary.

The foregoing petition considered it is ordered that Henry Mayer, Esquire, be and he is hereby appointed curator ad hoc to represent the absentee mentioned in the petition, to-wit:

The Gulf Company of the State of New Jersey, organized under the laws of said State.

Granted in Chambers this 30th day of June, A. D. 1898.

(Signed) A. C. ALLEN, Judge.

Received and filed June 30, 1898.

(Signed) JNO. R. PARKERSON, Clerk.

Citation.

State of Louisiana, 24th Judicial District Court, Parish of St. Mary.

HEIRS OF FRANCOIS GONSOULIN AND WIFE,

vs. No. 10,129

THE GULF COMPANY.

To the Gulf Company, of New Jersey:

You are hereby summoned to comply with the prayer of the petition, a true and faithful copy whereof is hereto attached and accompanies this citation, or to file your answer thereto, in writing, with the Clerk of said Court at his office in the town of Franklin, ten days after the service hereof, adding one day for every ten miles your residence is distant from the place of holding said Court in the town of Franklin.

Witness the Honorable A. C. Allen, Judge of said Court, this 30th day of June, A. D. 1898.

(Signed) JNO. R. PARKERSON,
Clerk of said Court.

Personal Services.

6 Received this citation the first day of July, A. D. 1898, duly served by delivering a copy of this citation, with a certified copy of the original petition annexed, to Alcide Falgout personally, this 2d day of July, A. D. 1898, the said Alcide Falgout being in actual possession and controlling said "Belle Isle" designated in petition.

(Signed) ERNEST E. DITCH,
Deputy Sheriff, Parish of St. Mary.

A true copy of this citation with a certified copy of the original petition annexed served on The Gulf Company of New Jersey by delivering same to Henry Mayer Curator ad hoc personally this 1st day of July, 1898.

(Signed) E. N. CORNAY,
Depy. Shff. Parish St. Mary.

Received and filed July 6, 1898.

(Signed) JNO. R. PARKERSON, Clerk.

24th Judicial District Court, Parish of St. Mary.

HEIRS OF FRANCOIS GONSOULIN,
vs. No. 10,129.
THE GULF COMPANY.

To the Honorable A. C. Allen, Judge of said Court:

Your petitioner, The Gulf Company of New Jersey, with due respect showeth:

That it is the defendant in the foregoing suit, and that it is a corporation organized under the laws of the State of New Jersey and as such is a citizen of said State and a non-resident of this district, and was such citizen of New Jersey, and such non-resident of this district at the time this suit was brought, and is such citizen and such non-resident at this time.

That all of the plaintiffs in said cause, describing themselves as the heirs of Francois Gonsoulin, and his wife are now and were at the time this suit was brought citizens of the State of Louisiana, and inhabitants of this district.

That the object of said suit is to eject this defendant from a piece of property situated in this district, known as Belle Isle, the value of which exceeds the sum of twenty-five thousand dollars (25,000.00), and that your petitioner is entitled to remove this cause into the Circuit Court of the United States for the Eastern District of Louisiana, said Court having original jurisdiction of this cause under the statutes of the United States.

Wherefore, petitioner prays that in consideration of the premises and of the annexed bond for five hundred dol-
7 lars ($500.00), conditioned as the law directs, this Honorable Court may enter an order removing this cause to the Circuit Court of the United States for the Eastern District of Louisiana, and proceed no further in this suit in this Court.

(Signed) FARRAR, JONAS, KRUTTSCHNITT & GURLEY, Attorneys.

Order.

The foregoing petition and the accompanying bond being considered,

It is ordered that this bond be accepted, and that this cause be removed to the United States Circuit Court for the Eastern District of Louisiana at its next term, and that no further proceedings be had in this Court in said cause.

(Signed) A. C. ALLEN, Judge.

Received and filed July 30, 1898.

(Signed) JNO. R. PARKERSON, Clerk.

24th Judicial District Court, Parish of St. Mary.

Heirs of Francois Gonsoulin,
vs. No. 10,129.
The Gulf Company.

Know All Men By These Presents:

That we, The Gulf Company, as principal, and Edgar H. Farrar, as surety, are held and firmly bound unto Martial Bonin, Valcourt Bonin, Ovignac Bonin, Amanthe Toffier, widow, and Mathilde Broussard, widow, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel, Joseph Dressel, Azelie Bonin, wife of Leon Pavy, Leon Pavy, Arsene Bonin, wife of Ulienor Dugas, Ulienor Dugas, Corine Breaux, wife of A. Breaux, A. Breaux, Despany Broussard, representing his minor children, Edward, Jule, Despany, and Amelia and Pierre Broussard, their heirs, executors and assigns, in the sum of five hundred dollars ($500.00) lawful money of the United States, for which sum we firmly bind ourselves, our heirs, administrators and assigns firmly by these presents.

The condition of this bond is such that, whereas, The Gulf Company has presented, made and filed in this matter a petition for the removal of the same to the United States Circuit Court for the Eastern District of Louisiana.

Now, therefore, if the said Gulf Company shall enter in such

Circuit Court on the first day of its next session a copy of the record in such suit, and pay all such costs that may be
8 awarded by the said Circuit Court, or if said Court shall hold that this cause was wrongfully or improperlv removed, then this obligation to be null and void, otherwise in full force and effect.

Thus done and signed this 29th day of July, 1898.

(Signed) THE GULF COMPANY,
P. P. FARRAR, JONAS & KRUTTSCHNITT, Attys.
EDGAR H. FARRAR, Surety.

Attest: H. H. WATERS.

Rec'd and filed July 30—98.
(Signed) JOHN R. PARKERSON, Clerk.

Clerk's Office,
Parish of St. Mary, La.

I hereby certify that the foregoing eight (8) pages comprises a full and complete transcript of all the documents filed and proceedings had in the suit, "Heirs of Francois Gonsoulin and Wife versus The Gulf Company," Number 10,129, of the docket of this 24th Judicial District Court of the State of Louisiana, on file and of record in my said office.

In evidence whereof witness my hand and official seal this the 29th day of July, A. D. eighteen hundred and ninety-eight.

(Signed) JOHN R. PARKERSON, Clerk.
[Seal] Clerk 24th Judicial District Court of La.

I hereby certify that Jno. R. Parkerson, whose genuine signature appears subscribed to the foregoing certificate, is the duly elected and qualified Clerk of the 24th Judicial District Court, of the Parish of St. Mary, Louisiana, and that full faith and credence should be given to all his acts in his capacity of Clerk aforesaid.

Witness my hand and seal this 29th day of July, A. D. 1898.

[Seal] (Signed) A. C. ALLEN,
Judge 24th Judicial Dist. Court.

Clerk's Office,
Parish of St. Mary, La.

I, Jno. R. Parkerson, Clerk of the 24th Judicial District Court of the State of Louisiana, do hereby certify that A. C. Allen, whose signature appears attached to the foregoing certificate, is and was at the time of signing the same the duly elected and qualified Judge of the 24th Judicial District Court

of the State of Louisiana, and that all his acts in his said official capacity of Judge aforesaid are entitled to full faith and credence in law.

9 In evidence whereof witness my hand and official seal this 29th day of July, A. D. 1898.

[Seal] (Signed) JNO. R. PARKERSON,
Clerk 24th Judicial District Court of La.

(25 cents cancelled U. S. Internal Revenue Documentary stamps.)

Proceedings in the United States Circuit Court.

Exceptions Filed Nov. 7, 1898.

U. S. Circuit Court, E. Dist. of La.

HEIRS OF GONSOULIN
vs. No. 12,760.
THE GULF COMPANY.

Now comes the defendant and for exception to plaintiff's demand avers and says:

1st. That the alleged heirship of the plaintiffs is set forth in such a vague and unsatisfactory manner as to be unintelligible and untraversable.

2d. That plaintiffs' title is not derained with sufficient clearness and detail as to permit this defendant to traverse the same.

Wherefore defendant prays that this exception be maintained and that plaintiffs be ordered to amend their petition within a delay to be fixed by the Court, or that this cause be dismissed.

(Signed) FARRAR, JONAS, KRUTTSCHNITT &
GURLEY, Att'ys. Def'ts.

Edgar H. Farrar, being duly sworn, deposes and says that the defendant is absent from this State and that he is one of the said defendant's attorney and that this exception is not interposed for delay.

(Signed) EDGAR H. FARRAR.

Sworn to and subscribed before me this 7th day of Nov., 1898.

(Signed) H. J. CARTER, U. S. Commissioner.

10 **Supplemental and Amended Petition.**

Filed May 24, 1900.

United States Circuit Court.

HEIRS OF GONSOULIN
vs. **No. 12,760.**
THE GULF COMPANY.

To the Honorable, the Judge of the Circuit Court of the United States in and for the Eastern District of Louisiana:

The petition of Fernand Bonin, son and sole heir of Martial Bonin, deceased, Valcourt Bonin, Ovignac Bonin, Amanthe Toffier, widow, nee Bienvenue, and Matilde Broussard, nee Bienvenu, widow, and the petition of the following persons, heirs of Sylvanie Bienvenu and her husband, Duperon Bonin, both deceased, to-wit: Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel, Herzelie Bonin, wife of Leon Pallud, Arsene Bonin, wife of Eulienor Dugas, Corinne Bonin, wife of Aurelian Breaux, and of Despany Broussard, representing his minor children, issue of his marriage with Olivia Bonin, deceased, to-wit: Edward Despany, Jr., Jules Duperon, Pierre and Amelia; and also of Nanie Bonin, wife of Amede Gerois.

The husbands herein mentioned also joining their said wives as plaintiffs herein, all residents of Iberia Parish, with leave of the Court, amend their original petition, and now further represent:

1st. That since their said petition was filed Martial Bonin has died and left your petitioner, Fernand Bonin, his son and sole heir, who now appears.

2d. Your petitioners, in order to give full information relative to the heirship of the lawful descendants of Francois Gonsoulin, who died September 22d, 1819, and of Louise Celeste de la Gontrais, his wife, who died in 1830 (much having come to their knowledge since their first appearance), and in order to more explicitly set forth the titles, transfers and acts by which the heirs of Francois Gonsoulin, deceased, became the owners of "Belle Isle," the subject of this suit; now first declare that the following is a true and correct list of the children and heirs of Francois Gonsoulin and his said wife, deceased.

These two dying left the following children, all residents of St. Martin Parish, to-wit:

11 1st. Marie Celeste, born in 1780, who married Francois Boutte; she and her husband died before 1860.

2d. Anne Pouponne, born in 1881, married Sebastian Castello; both of whom died before the year 1861.

3d. Margaret Adelaide, born in 1784, married Henry Greigg; both died before the year 1861.

4th. Juseph Antoine, born in 1785, married Miss Ransounet; both died before 1860.

5th. Jean Baptiste Beaumelle, born in 1787, and died without issue before 1860.

6th. Pierre Harpin, also called Antoine, born May 25th, 1789, married Miss Migues; both died before 1861.

7th. Clait St. Clair, born in 1791, married Miss Bourgeois; both died before 1861.

8th. Marie Arsene, born 1st of May, 1793, died without issue before 1861.

9th. Marie Pepite Josephine, born February 2nd, 1795, married twice—first Timoleon Bienvenu; second, J. B. Bonin; both husbands died before 1860, and the wife in 1880. There were three children of their marriage.

10th. Francois Dermancourt, born in 1797, married Miss Pouponne Dugas; both died before 1861.

11th. Jean Baptiste Luzencourt, born in 1799, married Anasie Bonin, and at her death married Irma Bonin; all were dead before 1890.

12th. Ursin, born March 3rd, 1802, married Miss Leocade Mayer; both died before 1890.

13th. Francois Valcourt, born in 1805, who married Helena Herbert; both died before 1890.

Petitioners now show that the aforementioned children of Francois Gonsoulin left the following heirs at the date of their respective deaths, to-wit:

The Boutte Family—Marie Arsene (Mrs. Francois Boutte), first child of Francois Gonsoulin, left at her death ten children, to-wit:

1st. Virginia, who married Leon Gibson, and by a second marriage Leonce Broussard (all three now deceased), leaving by the two marriages three children as follows, to-wit: Hamilcar Gibson, now dead, without issue; Arthur Gibson, a resident of Vermillion Parish; Emily, wife of Caesar DeBlanc, of Iberia Parish, La.

2nd. Clemence Boutte, now widow of Leo Decon, a resident of New Iberia, La.

3rd. Clelie, wife of Camille Berard, both dead; they left one child, Clelie Berard, widow of Martial Bonin, a resident of Iberia Parish, La.

12 4th. Zenon Boutte, who married Celina Bonin, both dead, leaving the children: Zenon (now dead); Alcee Boutte, of age; Alphonse Boutte, Jules Boutte, now dead, and Alphonsine, wife of Oscar Gonsoulin, a resident of Calcasieu Parish, La.; Alcide Boutte, now dead, and Celestine Boutte, wife of Fernand Garrett, both dead, leaving a son, Fernand Garret, of age, and a resident of St. Bernard Parish, La.; and Jules Boutte, the deceased son of Zenon Boutte, left at his death the following children: John G. Boutte, Emily Boutte, wife of John Langlois, Corinne Boutte, wife of Julius Etie, Walter Boutte, Arthur, Edgar and Paul Boutte, the last four minors, herein represented by their mother, Ora Harry, widow of said Jules Boutte, natural tutrix, who joins as plaintiff herein; and Alcide, the deceased son of Zenon Boutte, left Felix Boutte, of age, Gaston Boutte and Sidney Boutte, minors, now represented by their mother, Mrs. Boutte, who joins as plaintiff herein; Laura Boutte, wife of Policarp Borel, and Louise Boutte, wife of Walter Harry; all residents of Iberia Parish, La.; and Zenon Boutte, son of said Zenon Boutte, deceased, left at his death Louise Boutte, of age, of New Iberia, La.

5th. Caesar Boutte, now dead, left by his marriage with Amelie Decou, now deceased, Aristide Boutte, now deceased; Joe Boutte, deceased. Aristide Boutte, son of said Caesar Boutte, left issue of his marriage with Miss Broussard, now deceased, Lydia Boutte, wife of Armand Megues, both dead, leaving a son, Nemour Megues, of age, resident of New Iberia, La.; Emily Boutte, wife of John Roland; Paul Boutte, of age, resident of New Iberia, La., and Mary Boutte, widow of P. D. Tatman, of Opelousas, La. Said Joseph D. Boutte left issue of a marriage, Frank, Joseph R., Charles Edmond, Oscar and May Boutte, the last the wife of George Sheard; all of Iberia Parish, La.

6th. Octave Boutte, deceased, who left at his death, issue of his marriage with Herzalie Gonsoulin, five children: Alexander Boutte, Aristide Boutte, Laura, wife of Similian Rodriguez; Celina, widow of Lem Riggs, deceased, Emily, deceased wife of Everard Bouzipue, deceased, who left one child, Maria Bouzique, femme sole.

7th. Terence Boutte, now dead left nine children, as follows: Frank Boutte; Hamilton, dead, Willie Boutte, Henry Boutte, Hardy Boutte (called Tobe); Cora Boutte, wife of M. L. Keller, Blanche Boutte, wife of Garcia Romero, Marie Boutte, wife of Charles Espinar, and Alice Boutte, deceased, wife of Ovide Herbert; she left two boys, minors: T. Frere Herbert and Tontant Herbert, represented now by their said father, said
13 Hamilton, deceased, son of Terrence Boutte, left three children, minors, represented by their natural tutrix, and

mother, Zoe Robichaux, to-wit: Paul, Ada and Marie Boutte, the said natural tutrix joining as plaintiff herein.

8th. Achille Boutte, now deceased, who left by his widow, Azema Boutte, a resident of Orleans Parish, La., five children: Olympe, wife of August Delpit, of Orleans Parish, La.; Blanche, wife of Chas. Delpit, of Orleans Parish, La.; Clara, wife of Chas. Duran; Albert Boutte, of Iberia Parish, La., and Edward Boutte, of Opelousas, La.

9th. Emile Boutte, now deceased, left at his death three children, issue of his marriage with Celina Blanc, deceased, to-wit: Celina, wife of H. Girois, of Iberia Parish, La.; Edward Boutte, now of age, living at New Iberia, La., and Aristide, now dead, who left issue of his marriage a daughter, Celina, now wife of A. Romero, a resident of Iberia Parish, La.

10th. Elizabeth Coralie Boutte, wife of Clerville T. Patin, both residents of Iberia Parish, La.

And now to this petition come and join in their own name and by their said tutors, tutrixes and representatives, all the heirs aforementioned, whose claim and right herein holds through Marie Celeste Boutte, the first child of Francois Gonsoulin.

And petitioners further show, that Anne Pouponne Gonsoulin, second daughter of Francois Gonsoulin, left, as issue of her marriage with Henry Greigg, two children, Edmond Castello and Terence Castello, both now dead, the latter without children; the former left as issue of his marriage with a Miss Greigg, a daughter, Angel, now widow of Buillard, and Matilde, wife of Emile Landry, all residents of St. Martin Parish, La.

And now these heirs of Pouponne Gonsoulin, those married joined and assisted by their husbands, now join in this petition, and claim their interest hereinafter stated through said Anne Pouponne Gonsoulin, the second child of Francois Gonsoulin.

And petitioners further show, that Margaret Adelaide, third child of Francois Gonsoulin, wife of Henry Greigg, now deceased, left at her death three children, to-wit: Henry Greigg, William Greigg and Delia Greigg, all of whom are dead. Said Henry Greigg left at his death three children, issue of his marriage with one Gathz, deceased, to-wit: Stanislas Greigg, George Greigg and Louis Greigg, the first dead, the last two of age, residents of St. Martin Parish, La.; said Stanislas Greigg left, as issue of a marriage, seven children; Agalice, wife of H. Clair Dugas, Henry Greigg, George Greigg, Adeline Greigg,
femme sole, Etta Greigg, femme sole, and Agatha
14 Greigg, femme sole, all residents of Iberia Parish,
La.

And William Greigg left, as issue of his marriage with Emily LeBlanc: Elizabeth, deceased wife of A. G. Himel, who left

three children; Mary, of age, femme sole, Rosa, wife of M. D. Dalferes, Corinne, femme sole, Olympe, femme sole, all of age; Rosa Greigg DeBlanc, widow of Ralph DeBlanc; John Greigg and Carlos Greigg; and Delia Greigg left as issue of her marriage with Edmond Castello, now deceased, Matilde Castello, wife of Emily Landry, and Angel Castello, widow Auguste Baillard, of St. Martin Parish, La.; and these heirs who claim through Adelaide, third daughter of Francois Gonsoulin, come and join in this petition, the said husbands also joining herein to assist their wives.

And petitioners further represent, that Josephine Antoine Gonsoulin, fourth child of said Francois Gonsoulin, left as issue of her said marriage, nine children, as follows, to-wit:

1st. Onizaphor, now dead, leaving issue of marriage, to-wit: Auphemie, wife of Gaston Girois; Eugenie, wife of Edmond Gonsoulin, and Joseph, Numa, and Celemar, wife of Edward Nero, and Oscar, all residents of Iberia Parish, La., and of age.

2d. Dupree Gonsoulin, now a resident of New Iberia, La.

3d. Philias, now deceased, who left by his wife, Sylvia Decuir, now living, the children, Louise and Sydney, the latter of age, resident of New Iberia, La., the former the wife of Albert Lebert, of St. Martin Parish, La.

4th. Matilde, wife of Sosthene Breaux, both residents of Iberia Parish, La.

5th. Celestina, who died, leaving as issue of her marriage with Alcide Gonsoulin, a daughter, Dorsienne, wife of Jules Grivat, resident of Iberia Parish, La.

6th. Ernestine, now dead, leaving as issue of her marriage with Judge Fontelieu deceased, Charles and Albert Fontelieu, residents of the Parish of Orleans, La., of age.

7th. Octavie, now dead, leaving as issue of her marriage with Polain Fontelieu, deceased, Polain Fontelieu and Annette Fontelieu, both residents of Iberia Parish, La.

8th. Martial, who is dead, and left no children.

9th. Natalie, wife of Euselie Zelu, both residents of Iberia Parish, La.

And now to this petition come and join, in their own name, and by their said representatives, the husbands of the said wives joining and assisting them herein, all the said heirs who claim herein by reason of their descent through the said
15 Joseph Antoine Gonsoulin, deceased, fourth child of said Francois Gonsoulin.

And petitioners further show, that the fifth child of Francois Gonsoulin, Jean Baptists Beaumelle, died without issue before the year 1861.

And petitioners show, that the sixth child of Francois Gon-

soulin, Pierre Antoine Harpin, left as issue of his marriage aforesaid three children:

1st. Nannie (wife of Gustave Gonsoulin, now both deceased).

2nd. Elodie, who died without issue, and Erzalie, widow of Octave Boutte, now resident of Iberia Parish, La.

The first of these children, Nannie Gonsoulin, leaving three children; Marie, wife of Selomer Solomon; Joe Gonsoulin and Leocadie, wife of John Broussard, all residents of Iberia Parish, La.

And now come and join in this petition all the said heirs whose interest and claim arise herein through said Pierre Antoine Harpin Gonsoulin, the sixth child of said Francois Gonsoulin, the said husbands joining and assisting their wives herein.

Petitioners further show, that Clair St. Clair Gonsoulin, the seventh son of Francois Gonsoulin, left as issue of his said marriage four children, to-wit: Alcide and Adrien, both of age, and now residing in Iberia Parish, La., and Elmire and Alfred, the two last both dead. Said Elmire left as issue of her marriage with D. Dugas; St. Clair Dugas; Alida, wife of Eugene Verret; and Herzalie, wife of H. Maurice Provost; all of age, and residents of Iberia Parish, La. And said Alfred left by his said wife, Susette Decuir, now a widow, seven children, to-wit: Anatole Gonsoulin, Fernand Gonsoulin, Theresa Gonsoulin, deceased wife of George Labau, Eva Gonsoulin, wife of Damas Morisi, Alfred Gonsoulin, Jr., Sidney Gonsoulin and Corinne Gonsoulin, the last three minors, represented herein by their said mother and natural tutrix, Susette Gonsoulin, who joins as plaintiff herein, and said Theresa, wife of George Labau, left a minor child, Eva Labau, herein represented by her said father, who joins as plaintiff herein.

And now to this petition come and join these heirs of Clair St. Clair Gonsoulin, deceased (seventh son of Francois Gonsoulin), claiming through their said representatives, said husbands joining their said wives to aid and assist them herein.

8th. Petitioners now show, that the eighth child of Francois Gonsoulin, Marie Arsene, died without issue, never having been married.

16 Petitioners further allege, that Marie Pepite Josephine, ninth child of Francois Gonsoulin, left as issue of two marriages; with, first Timoleon Bienvenu, deceased, four children; Sylvanie, deceased wife of Duperon Bonin, deceased; Jules, who died without issue; Arminthe, widow of Dauterrive Toffier, and Matilde, widow of Telesphor Broussard. Said Sylvanie, deceased, wife of Duperon Bonin, deceased, left, Edgar Bonin, of age; Albert Bonin, of age; Olympe, wife of Joe Dressel; Herzalie, wife of Leon Pallud; Arsene, wife of Uleanor

Dugas; Corinne, wife of Aurelian Breaux; Mamie, wife of Amadie Gerois, and Olivia, wife of Despany Broussard.

And said Marie Pepite Josephine, by her second marriage, with J. B. Bonin, left three children, to-wit:

Martial Bonin, who died, and left Fernand Bonin, his only son and heir, of Iberia Parish, La., now of age.

Ovignac Bonin and Valcourt Bonin, residents of Iberia Parish, La., both of age.

And now come and join in this petition all these heirs of Marie Pepite Josephine, who are residents of Iberia Parish, La., the husbands aforesaid joining their said wives herein to aid and assist them, all claiming through their said ancestor, the ninth child of Francois Gonsoulin.

10th. And petitioners further represent, that Francois Dermancourt, the tenth child of Francois Gonsoulin, left as issue of his marriage aforesaid, two children; Desire Gonsoulin, now a resident of Rayne, La., and Clelie, deceased wife of Eulienor Dugas; and her heirs now interested herein (issue of her marriage with said Dugas), are Edwin Dugas, Edmond Dugas, Edward Dugas, Leonce Dugas, and Marie Louise Dugas, wife of Henry Lee Dugas, all residents of said Parish of Iberia, La.

And now come and join in this petition all these heirs whose rights herein arise from their descent through Francois Dermancourt, deceased, tenth child of Francois Gonsoulin, the husband of said wife here joining and assisting her for the purpose of this suit.

11th. And petitioners further show, that John Baptists Luzencourt Gonsoulin, the eleventh child of Francois Gonsoulin, left as issue of his marriage aforesaid, four children: Homer, Euselie and Luzin Gonsoulin, of age, residing in Iberia Parish, La., and a daughter, Anatasie, deceased wife of Dorville Broussard, who left Robert F., Albert, Louis and Edwin, all of New Iberia, La., Blanche, wife of Preston Guilbeau, of St. Martinville, La., and Marie, wife of Richard Steckler, a resident of New Orleans, La.

17 And now come and join in this petition all these heirs, the wives joined and assisted by their husbands, all claiming through John Baptiste Luzencourt Gonsoulin, the eleventh child of Francois Gonsoulin, and asserting their claims herein as hereinafter set out.

12th. And petitioners further represent, that Ursin Gonsoulin, the twelfth child of said Francois Gonsoulin, left as issue of his said marriage, two children, Gustave Gonsoulin, now dead, and Celina, wife of Valiere Dauterive, both of Iberia Parish, La. The said Gustave Gonsoulin, deceased, left issue of a marriage as follows: Joe Gonsoulin; Leocade, wife of John Broussard; Marie, wife of Fernand Solomon, all residents of said Iberia Parish, La.

And now come and join in this petition all these heirs whose rights and claims arise from their descent through Ursin Gonsoulin, twelfth child of Francois Gonsoulin, the said husbands joining their wives herein to authorize them, and claiming as hereinafter set forth.

13th. And petitioners further show, that Francois Valcourt, thirteenth child of Francois Gonsoulin, left issue of his marriage aforesaid, one child, Helena Gonsoulin, wife of Victor Lebauve, a resident of Edna, Jackson County, Texas.

And now come and join in this petition said Helena Lebauve, herein assisted by her said husband, for the purpose of asserting her claim as heir by descent through Francois Valcourt, deceased, the thirteenth child of Francois Gonsoulin, as hereinafter set out. That all of said plaintiffs and petitioners herein are citizens of the State of Louisiana.

And your petitioners further show, that they have fully set forth their heirship and descent from Francois Gonsoulin, and they represent that he died in the year 1819, and that his wife, Marie Louise Celeste de la Gontrais, died in the year 1830, both in St. Martin Parish.

Petitioners further show that they are the true and lawful owners, jointly and in indivision, of Belle Isle island, situated in the Parish of St. Mary, State of Louisiana, at or near the mouth of the Chafalaya river, a more particular description of which is as follows, to-wit:

Section 28, township 17 S., R. 10 E., and section 19, T. 17 S., R. 11 E., containing 2826.28 acres of land, and all the buildings and improvements thereon, and appurtenances thereunto belonging or in anywise appertaining; for this, to-wit:

That on August 21st, 1878, there was issued, by the United States of America, a patent, or letters patent, to the said land,
by which the said land was given and granted unto the
18 said Dautrieve Ducuclet, Benoist de St. Clair, and Francois Gonsoulin, or to their legal representatives, or to their heirs or assigns, the said tract of land known as the island of Belle Isle, and hereinbefore more particularly described.

All as more fully appears by a copy of said patent, or letters patent, filed herewith as part hereof.

That the said patent, letters patent, or grant, constitute a title to said property in favor of the grantees therein named, their representatives, heirs or assigns, which is legal, valid and binding, as against all persons.

Petitioners further show, that on April 27th, 1822, by authentic act passed before Paul Briant, judge of the Parish of St. Martin and ex-officio notary public, the said Benoist de St. Clair, by act of donation, inter vivos, conveyed and ceded unto

St. Clair Gonsoulin, one of the sons of the said Francois Gonsoulin, all his right, title and interest, which he had in the said property, which said act of donation is registered in the office of the recorder of the said parish as No. 1844 Old Records; that the said St. Clair Gonsoulin has been deceased for many years, and the rights, property and interest acquired by him under and by virtue of said donation, have passed, by successive inheritance, to his descendants, some of the plaintiffs herein.

All as more fully appears by a copy of the said act filed herewith as part hereof.

Petitioners further show, that on April 27th, 1822, by act before the same Paul Briant, judge of the said Parish of St. Martin and ex-officio notary public, Joseph Dubuclet, the sole legal heir of Dautrieve Dubuclet, and his mother, Mrs. Marie Marthe Bienvenu, widow of the said Dautrieve Dubuclet, in said act named. Claire Dautrieve Dubuclet, ceded, conveyed and irrevocably transferred, in equal portions, their right, title and interest in said property, to the following persons:

Joseph Gonsoulin, Jean Baptiste Beaumelle Gonsoulin, Pierre Harpin Gonsoulin, St. Clair Gonsoulin, Jean Baptiste Luzencourt Gonsoulin, Francois Ursin Gonsoulin, Francois Valcourt Gonsoulin, Mrs. Celeste Gonsoulin, widow of Francois Ceasar Gonsoulin, Borritte fils, Pomponne Gonsoulin, widow of Charles Timoleon Bienvenu, Devince Adelaide Gonsoulin, widow of Mr. George Greigg, and Arsene Gonsoulin.

That the donees named in the said act were all the children of the said Francois Gonsoulin; the said act being registered in the office of the recorder of the Parish of St. Martin as No. 1884 Old Records.

19 Petitioners further show, that the said children and heirs of Francois Gonsoulin, and their descendants and legal representatives, some of the petitioners herein, the four children of St. Clair Gonsoulin, or their descendants, taken by roots or by rotation, and the true and lawful owners of one-third, and also of one-eleventh of the remaining two-thirds, of the said tract of land.

That the other petitioners herein are the following, to-wit:

Each of the children of Francois Gonsoulin who left heirs, there being eleven of these, two having died without issue, as stated left to their children mentioned one eleventh of two-thirds of said entire property, and the heirs of these last take equally by root and by share from their said fathers and mothers, all their names, descent and degrees of relationship, having been hereinbefore set out.

Petitioners further show, that The Gulf Company, a corporation created by or organized under the laws of the State of New Jersey, and a citizen of that State, but having an agent in the

said Parish of St. Mary, within the Eastern District of Louisiana, with full power to receive citation and stand in judgment for it, is now in the possession of said property, under some pretended title of ownership, of the precise nature of which petitioners are not advised, but which is wholly illegal, null and void, for all purposes; that the said Gulf Company is a possessor in bad faith, and petitioners reserve their rights to claim from it the fruits, rents and revenues of the said property, according to law.

Wherefore petitioners pray, that this amended petition be filed; that the petitioners herein who are not named as such in the original petition be permitted to join with their co-heirs, all of whom pray to be recognized as heirs, descendants and legal representatives of Francois Gonsoulin and his said deceased wife, as hereinbefore set forth; that the said Gulf Company be duly cited to answer this petition, and that after due proceedings, petitioners, both in this and in the original petition herein, be recognized as the true and lawful owners of the said property described in the patent, letters patent, or grant, issued to Dautrieve Dubuclet, Benoist de St. Clair and Francois Gonsoulin by the United States of America, on August 21st, 1878, and ordering the marshal to put them in physical possession of said property, all in the undivided shares and proportions as shown herein; that all writs of possession, or other writs necessary for this purpose, be issued; that there be reserved to petitioners, both in this and in the original petition herein, the right to claim rents and revenues of the said property from the said Gulf Company during the period of its possession of the same, with costs, and for general relief.

(Signed) TODD & DAVIS,
CHARLES A. O'NIEL,
Attorneys for Petitioners.

(Signed) BRANCH K. MILLER, of Counsel.

Service accepted; citation waived.
New Orleans, May 29, 1900.
(Signed) FARRAR, JONAS & KRUTTSCHNITT,
Attorneys Gulf Company.

New Orleans, May 31st, 1900.

Exceptions.

Filed June 1, 1900.

United States Circuit Court, Eastern District of Louisiana, at New Orleans.

HEIRS OF GONSOULIN,
vs. **No. 12,760.**
THE GULF COMPANY.

Now comes The Gulf Company, defendant herein, and for peremptory exception to the petition and supplemental and amended petition of the plaintiffs herein, plead and say:

First. Defendant pleads in bar of the plaintiffs' petition the prescription of ten years, because that this defendant, by itself and its transferrors, had been in possession in good faith of the property in question known as Belle Isle, under title translative of property, for more than ten years prior to the date of the institution of the suit in this cause:

Second. Defendant pleads in bar of the plaintiffs' demand, the prescription of thirty years, because that this defendant and his authors in title had been in continuous and uninterrupted possession as owners, and in enjoyment of the property claimed in this suit, known as Belle Isle, for more than thirty years prior to the institution of this suit, to wit: for more than one hundred years prior to the institution of said suit:

Third. Defendant pleads in bar of the plaintiffs' demand the authority of the thing adjudged, for that the ancestors of the plaintiffs did in the year 1822 in the District Court of the Parish of St. Mary in the State of Louisiana, institute a
21 certain suit, styled Heirs of Gonsoulin and others vs. Walter Brashear, being No. 355 of the Docket of said court, wherein and whereby the said heirs of Gonsoulin, and others, ancestors of the plaintiffs, did set up and claim the property known as Belle Isle, being the same property in possession of this defendant, and claimed by the plaintiffs herein, then in possession of Walter Brashear, averring and setting up the same claim of title, whereunder and whereby the present plaintiffs set up claim of title to said property against this defendant, and that after due and proper proceedings had in said cause, the said Court rendered a judgment in favor of the said Walter Brashear, forever quieting him in the possession of the said property claimed in said cause; that the judgment of said Court the said Heirs of Gonsoulin and others prosecuted an appeal to the Supreme Court of the State of Louisiana, and the

Supreme Court of the State of Louisiana affirmed the said judgment and declared the alleged title of the said Gonsoulin and others to be invalid and of no effect as against the title of the said Walter Brashear, and further decided that the government of the United States had no title in and to the said Belle Isle property, which they might or could convey to the ancestors of the plaintiffs or anybody else; all of which will more particularly appear by a certified copy of the record in said suit of the Heirs of Gonsoulin and others vs. Walter Brashear, No. 355 of the Docket of the District Court for the Parish of St. Mary, hereto annexed and made part of this peremptory exception, and also by reference to the opinion of the Supreme Court of the State of Louisiana rendered in said cause and reported in the 5th Volume of Martin's Reports, N. S. from pages 33 to 40; that this defendant holds the said property under direct chain of title from the said Walter Brashear, defendant in said suit, and the author of its title, and that both the plaintiffs and this defendant are privies to the said suit and are bound by the judgment and decree herein rendered.

Wherefore defendant prays that these peremptory exceptions may be maintained and the plaintiffs' demand rejected with costs.

(Signed) FARRAR, JONAS & KRUTTSCHNITT,
Attorneys.

22 Motion for Bond for Costs.

Filed June 1, 1900.

United States Circuit Court, Eastern District of Louisiana, at New Orleans.

HEIRS OF GONSOULIN,
vs. No. 12,760
THE GULF COMPANY.

On motion of Farrar, Jonas & Kruttschnitt, attorneys for The Gulf Company, defendant in this cause, and on suggesting to the Court that because of the enormous number of plaintiffs in this cause, and because of the issue involved, that is, the attempt to recover title to a piece of property which has been in possession of this defendant and its authors for more than one hundred years; and on further suggesting to the Court that this defendant will be put to enormous costs in producing old records and deeds and taking the testimony of many witnesses to prove such title and possession, in the sum of at least one

thousand dollars, and that this defendant is entitled and ought in justice to have a bond for its costs in this cause;

It is ordered by the Court that the plaintiffs, through their counsel of record, Branch K. Miller, Esquire, do show cause on Saturday, June 9th, at eleven o'clock, why they should not give the defendants herein a bond for costs, with good and sufficient security in the sum of one thousand dollars ($1,000.00), within a delay to be fixed by the Court, and why in the event of their failure to give such bond within such delay, this cause should not be dismissed out of this Court.

Marshal's Return on Motion.

Received by U. S. Marshal, New Orleans, La., June 4, 1900. And on the 5th day of same month and year I served copy hereof on Branch K. Miller by handing same to E. Stand, Clerk at the office.

(Signed) CHAS. FONTELIEU, U. S. Marshal.
By FELIX BIENVENU, Dpy. M.

June 9, 1900—Motion taken by defendant upon plaintiffs to require them to furnish bond for costs, called and continued.

23 January 7, 1901—Motion of counsel for defendant and order of Court thereon fixing Motion for Bond for Costs on Saturday, January 12th, 1901, at 11 a. m.

Orders of Court Fixing Bond for Costs.

Extracts from the Minutes, November Term, 1900.

New Orleans, Saturday, January 12, 1901.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, District Judge.

HEIRS OF GONSOULIN,
vs. No. 12,760.
THE GULF COMPANY.

The motion of defendant to require plaintiffs to give a bond for costs in the sum of $1,000.00 came on to be heard, and was argued and submitted by counsel for mover, The Gulf Co., counsel for plaintiffs in suit being absent, but having been duly served with notice.

Whereupon and on consideration thereof it is ordered plaintiffs furnish a bond for costs in the sum of $500.00, with leave

to the defendant to move for an increase of bond, if deemed necessary.

It is further ordered that 15 days be allowed plaintiffs to give such bond.

Bond for Costs.

Filed January 24, 1901.

United States Circuit Court, Eastern District of La.

HEIRS OF GONSOULIN,
vs. No. 12,760.
THE GULF COMPANY.

Be it known that we, the heirs of Francois Gonsoulin, deceased, plaintiffs, in the above entitled suit, to-wit: Martial Bonin, et als., named in the petition herein and in the supplemental petition, which are now referred to for greater certainty as principals and G. L. Hall as surety are held and
24 firmly bound unto The Gulf Company, defendant, in the full sum of five hundred dollars ($500.00) for costs in the above numbered and entitled cause.

Now the condition of the above obligation is such that if judgment for costs should be rendered against the said Gulf Company, if the said heirs of Gonsoulin should pay such judgment for costs as may be rendered against them in the said cause, this obligation is to be null and void, otherwise to remain in full force and effect.

HEIRS OF GONSOULIN,
(Petitioners Named as Claimants in Petitions.)
(Signed) By TODD & DAVIS, Att'ys.
(Signed) GILBERT L. HALL.

Thursday, April 25, 1901—Motion of plaintiff and order thereon fixing exceptions for trial on Saturday, May 4th, 1901, at 11 a. m.

Saturday, May 4, 1901—Exceptions continued to May 11, 1901, at 11 a. m. by agreement of counsel.

Saturday, May 11, 1901—Motion of counsel for plaintiffs and order thereon, continuing exceptions or plea to June 1, 1901.

Amended Plea.

Filed May 16, 1901.

U. S. Circuit Court, Eastern District of Louisiana.

HEIRS OF GONSOULIN,
vs. No. 12,760.
THE GULF COMPANY.

Now comes the defendant and amends its plea of prescription and res adjudicata hereinbefore filed, by disclaiming title or possession to all that part of the property claimed in the plaintiff's petition lying east of Doctor's Bayou, being that
25 part lying east of said bayou of section 19 of township 17 south, range 11 east.

Wherefore defendant prays leave to file this amended plea and for judgment as prayed for in its original plea, dismissing the plaintiffs' demand.

(Signed) FARRAR, JONAS & KRUTTSCHNITT,
Attorneys.

Order.

Let this amended plea be filed. May 16th, 1901.
(Signed) CHARLES PARLANGE, Judge.

Saturday, June 1, 1901—Motion of counsel for defendant and order of Court continuing exceptions to Saturday, June 8, 1901.

Saturday, June 8, 1901—Exceptions continued for the term on motion of counsel for defendant suggesting to the Court that the exceptions require a jury present, and the jury being discharged for the term.

October 29, 1901—Motion of counsel for plaintiffs filed setting down exceptions for trial on November 12, 1901.

Case Called for Trial Upon the Exceptions—Names of Jury—Hearing and Continuance.

Extract from the Minutes, November Term, 1901.

New Orleans, Tuesday, November 12, 1901.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, District Judge.

HEIRS OF GONSOULIN,
vs. No. 12,760.
THE GULF COMPANY.

This cause was this day called for trial upon the exceptions filed by the defendant.

26 Farrar, Jonas & Kruttschnitt appearing for The Gulf Company, exceptors.

David, Todd & Branch K. Miller for Heirs of Gonsoulin, plaintiffs in suit.

Whereupon the following named jurors were called and sworn to well and truly try the issue joined herein, to-wit:

1. A. G. Palfrey,
2. J. B. Mitchell,
3. F. Kreter,
4. H. R. Labouisse,
5. Louis P. Landry,
7. A. T. Terry,
8. Henry W. White,
9. M. K. Foreman,
10. J. P. Weber,
11. Jno. C. McCracken.

When the Court appointed H. R. Labouisse foreman of the jury and the trial was proceeded with.

After hearing the pleadings, evidence and arguments of counsel in part, it was ordered that the cause be continued until tomorrow at 11 a. m.

Note of Evidence of Defendant.

Filed November 12, 1901.

HEIRS OF GONSOULIN,
vs. No. 12,760.
THE GULF COMPANY.

Defendants offerings in support of exceptions of prescription and res judicata.

1. Agreement of counsel as to partial statement of facts.
2. Deed of Parish Judge of Parish of St. Martin, La., dated July 25th, 1809, to John N. Kershaw, of land called Belle Isle.
3. Deed from J. N. Kershaw to Henry Johnson, July 25, 1809, of island of Belle Isle.
4. Deed from Henry Johnson to Walter Brashear, dated Aug. 5, 1809.

5. Certified copy of Marshal's deed of R. B. Lawrence of land sold in suit of E. Warfield et als. vs. Heirs of Walter Brashear No. 161 of the Docket U. S. C. Court deed being dated April 30, 1869.

6. Deed from R. B. Lawrence to R. S. Withers, dated July 20, 1892.

27 7. Sale of real estate of R. S. Withers to Gustave Sylian Dorwin, dated May 15, 1897.

8. Affidavit of A. F. Lucus, dated February 17, 1897.

9. Deed of A. F. Lucus to Gustave Sylvan Dorwin, dated May 17, 1897.

10 and 11. Copies of Mortgages from G. S. Dorwin to A. F. Lucus, March 2, 1898, and R. S. Withers to G. S. Dorwin, dated February 7, 1898.

12. Certificate of release of mortgage recorded against G. S. Dorwin, dated January 16, 1901.

13. Original deed from Gustave Sylvan Dorwin to The Gulf Company of New Jersey, dated March 31, 1898.

14. Certified copy of confirmation of Commissioners from Receiver and Register of Land Office at New Orleans of land to Walter Brashear, claim No. B. No. 1169. See American State Papers.

15. Minutes of proceedings of Board of Commissioners on claim of Walter Brashear.

16. Copy of Report of Commissioners on claim of Dautrieve Dubuclet, Benoiste de St. Clair and Francois Gonsoulin No. 33.

17 and 18. General Act of Congress approved April 29, 1816, patent based on grant, said patent having been issued Aug. 21, 1878, to Dubuclet et als., together with survey attached.

19. Copy of certificate of Surveyor General of New Orleans, La., dated January 17, 1901, showing survey of land, and that portion of land marked in blue penciling, that defendants disclaim title to.

20. Certified copy of Judicial Record Petition, appearance, removal answer, and judgment in suit No. 355, Heirs of Gonsoulin vs. Walter Brashear.

21. Cert. copy of petition, appearance and application to remove Jany., 1823—Heirs of Gonsoulin, et als., vs. Walter Brashear.

22. Opinion of Supreme Court of La., 5th vol. new series, page 33 to 40—opinion by Judge Porter.

Also the following depositions:

1st. Mr. J. N. Wafford.

2. R. B. Lawrence.

3. R. S. Withers.

4. G. S. Dorwin.

28 **Bill of Exception No. 1.**

Filed as of Date November 13, 1901, Nunc Pro Tunc.

United States Circuit Court, Eastern District of Louisiana.

HEIRS OF FRANCOIS GONSOULIN AND WIFE, ET ALS.,
vs. No. 12,760.
THE GULF CO.

Be it remember that on the 12th day of November, nineteen hundred and one, the above entitled cause came on for trial, before the above Court, and a jury duly empaneled.

Honorable Charles Parlange presiding.

The plaintiffs appearing by Messrs. David Todd and Branch K. Miller, their counsel, and

Defendant appearing by Edgar H. Farrar, its counsel, and the following proceedings were had:

The petition of the plaintiffs, and the exceptions or pleas of res judicata and prescription made by defendant, were read to the jury respectively by counsels for plaintiffs and defendant.

Whereupon to maintain and prove the issues and contentions on its part, and to establish the facts necessary to establish its pleas of res judicata and prescription, the defendant offered, introduced in evidence upon the trial of this cause, before the Court and jury, the following evidence and testimony:

Agreement of counsel as to the partial statement of facts, signed by Farrar, Jonas & Kruttschnitt, attorneys for defendant, and Todd and Davis, attorneys for plaintiffs.

Deed of the parish judge of the Parish of St. Martin, Louisiana, dated July 25th, 1809, to John N. Kirshaw, of certain lands described therein called Belle Isle.

Deed from J. N. Kirshaw to Henry Johnson, signed and acknowledged before James White, parish judge, July 25th, 1809, of the property described in said deed.

Deed from Henry Johnson to Walter Brashear, dated August 5th, 1809.

Certified copy of the deed of the Marshal of the United States for the District of Louisiana, to Robert Lawrence, executed in a suit entitled, E. Warfield, et als., vs. Heirs of Walter Brashear, No. 161, of the docket of the United States Circuit Court, for the Eastern District of Louisiana, said deed being dated April 30th, 1869.

Certified deed from R. B. Lawrence to R. S. Withers, executed before Marcel T. Ducros, July 20th, 1892.

29 Certified copy of deed of sale by R. S. Withers to Gustave Sylvain Darwin, executed before Chas. T. Soniat, notary public, May 15th, 1897.

Affidavit of A. F. Lucas, made and subscribed to February 17th, 1897, before Hewes T. Gurley, notary public.

Certified copy of deed of A. F. Lucas to Gustave Sylvain Darwin, acknowledged by the said Lucas before Hewes T. Gurley, notary public, May 17th, 1897, acknowledged by Gustave Sylvain Darwin before Alfred McKay, commissioner of deeds for the State of Louisiana in the City of New York, May 28th, 1897.

Certified copy of an act of mortgage by Gustave Sylvain Darwin to Anthony Francis Lucas, passed before Charles T. Soniat, notary public, March 2nd, 1898.

Certified copy of an act of mortgage to Robert S. Withers by Gustave Sylvain Darwin, before Charles T. Soniat, notary public, February 7th, 1898.

Certified copy of releases of certain mortgages against Gustave S. Darwin, dated January 16th, 1901.

Original deed from Gustave Sylvain Darwin to the Gulf Company, of New Jersey, executed and signed in the City of New York, March 1st, 1898, before Alfred McKay, commissioner of deeds for the State of Louisiana in New York.

Copy of the confirmation of the commissioners of the claim of Walter Brashear, No. 1169, certified by the register and receiver of the Land Office, on January 15th, 1901, to be a true and correct copy of book "B" and commissioners' certificate on file in the United States Land Office. Also the printed report of the land commissioners on said claim to be found in the American State Papers, volume 3.

Minutes of the proceedings of the Board of Commissioners on the claim of Walter Brashear, had on July 22nd, 1811; also the minutes of the meeting of the same Board, held May 11th, 1815; both certified by James Lewis, surveyor general of Louisiana, to be true and correct copies of the original records on file in his office.

Copy of report of commissioners on claim of Dubouclet, St. Clair and Gonsoulin, being claim "B, No. 33."

The General Act of Congress, approved April 29th, 1816, the patent of the United States, issued August 21st, 1878, to Dautereive Dubuclet, Benoist De St. Clair and Francois Gonsoulin, entered as B. No. 33, in the report, dated May 1st, 1815, of the Commissioners for the Eastern District of the State of Louisiana, formerly the Territory of Orleans.

30 A copy of a certain plat or survey of a certain tract of land, in conformity with the report No. 33, issued by the Commissioners for the Eastern District of Louisiana, in favor of Dautereive Dubuclet, Benoist De St. Clair and Francois

Gonsoulin, certified by James Lewis, Surveyor General of Lousiana, to be a correct copy of the original on file in his office; the portion of said plat marked or tinted in blue penciling being that portion of the property in dispute herein to which defendants have disclaimed title.

Certified copy of the judicial record, petition, appearance, answer and judgment of court in suit No. 355, of the District Court for the parish of St. Mary.

Certified copy of record in said cause, dated Jan. 4th, 1823.

Opinion of the Supreme Court of Louisiana, as found in the fifth volume of Martin's Reports, new series, pages 33 and 40, opinion by Judge Porter; this opinion by agreement of counsel was not to be actually filed in evidence, but to be read from the fifth volume of Martin's Reports, new series, whenever required by either counsel or the Court, with the same effect as though a certified copy thereof was filed and made a part thereof.

The deposition of J. N. Wofford, taken before John B. Roberts, notary public, in and for the Parish of St. Mary, State of Louisiana, May 23rd, 1901.

Deposition of Robert B. Lawrence, taken before Thomas F. Green, notary public, in and for the County of Clarke, State of Georgia, July 4th, 1901.

Deposition of Robert S. Withers, taken at Clinton, Mississippi, May 24th, 1901, by J. M. Sharp, Mayor of Clinton and ex-officio Justice of the Peace.

Deposition of Gustave Sylvain Darwin, taken in the City of New York, May 27th, 1901, by William S. Phillips, notary public.

Whereupon the plaintiff, to support and maintain the issues on their part, and to prove the facts upon which they relied to meet, repel and overcome the said pleas of res judicata and prescription made by the defendant, introduced and filed in evidence, a copy of the patent of the United States, certified by Binger Herman, Commissioner General of the Land Office at Washington, D. C., February 15th, 1900, as being a true and literal exemplification of the records in his office, which patent was issued on August 21st, 1878, to Dautereive Dubuclet, Benoist De St. Clair and Francois Gonsoulin, for Section 28, Township 17, South Range 10 East; and 19, Township 17, South Range 11 East, in Louisiana, containing 2,826.28 acres.

Thereupon, that is after all the said testimony and evidence had been offered, introduced and filed in evidence by
31 plaintiffs and defendants as aforesaid, the usual hour for the adjournment of Court arrived and thereupon the further hearing and trial of this cause was adjourned until the day following, to-wit: November 13th, 1901, and thereupon the defendant, with the leave of the Court first obtained, to

support and maintain the issues on its part and to prove the facts going to establish its said pleas of prescription and res judicata, produced and examined as a witness in its behalf, Henry Gaston, a clerk in the office of the Surveyor General of Louisiana, who produced and by his testimony identified certain original maps on file and of record in the said office of the Surveyor General of township 17, south range 10 east, and of township 17, south range 11, east; and who testified that the original field notes of A. F. Rightor and Andrew F. McCullom, deputy surveyors, of Report No. 33 of the grant to Dubuclet, De St. Clair and Gonsoulin, as appearing on the said maps were in the records of the office of the said Surveyor General of Louisiana; whereupon the defendants offered, introduced and filed in evidence a certified copy of the official map from the office of the United States Surveyors General of Louisiana, of township 17, south range 10 east, and township 17, south range 11, east, and certified copy of the filed notes of A. F. Rightor and Andrew McCullom, of the survey or grant No. 33 to Dubuclet, St. Clair and Gonsoulin.

That this concluded the offerings of testimony or evidence by either plaintiffs or defendants or both, and the said agreement of counsel and the said deeds and certified copies thereof, acts of sale, affidavits, certified copies of mortgage, releases thereof, the original deed, copy of conformation of the Board of Commissioners, minutes or proceedings thereof, Acts of Congress, patent certificate of survey, and all judicial records, opinion of the Supreme Court of Louisiana and depositions and all of the documents, papers or instruments hereinbefore set out, constituted all or the whole of the testimony and evidence in the case, and there was no other testimony or evidence besides the above offered, adduced or filed in evidence upon the trial of this cause before the Court and jury, and that all of said agreements of counsel and the deeds, papers, documents and patents, above set out in detail, are made a part of this bill of exception to be taken and considered as though set out at length and fully incorporated therein, and are identified with this bill of exceptions by the making of my initials thereon.

That thereupon the plaintiffs, by their counsel, then and there, after argument and before the Court charged the jury,
32 moved and requested the Court to instruct the jury upon the whole of the testimony and evidence aforesaid, which was the whole of, and the only, testimony and evidence offered before the Court and jury on the trial of this cause, to find a verdict for the plaintiffs, which said motion and request of plaintiffs then and there made through their counsel was refused by the Court, to which refusal, plaintiffs, by their counsel, then and there excepted, and the said exception was then and there al-

lowed by the Court; and now plaintiffs hereby tender this their bill of exceptions to the Court, to sign and seal, and the Court does hereby sign and seal the same.

That thereupon the jury returned a verdict in favor of defendant on the said 13th of November, 1901.

And now, in furtherance of justice, and that right may be done, the Court allows the said exception and signs and certifies the same.

Done in open court, nunc pro tunc, as of November 13th, 1901, and ordered filed as of that date; and I certify that the bill was duly and seasonably presented to me for signature.

(Signed) CHARLES PARLANGE, U. S. Judge.

Partial Statement of Facts.

Filed Nov. 12, 1901.

Identified with Bill of Exceptions No. 1. Nunc Pro Tunc, as of November 13th, 1901.

United States Circuit Court, Eastern District of Louisiana.

HEIRS OF GONSOULIN,
vs. No. 12,760.
THE GULF COMPANY.

The following facts are hereby agreed upon in this case, to be used upon the trial of the plea of prescription and res adjudicata pleaded by the defendant, each party to be at liberty to offer any other evidence they may desire.

I.

The following original deeds being deposited in the Clerk's office of St. Martin Parish, it is agreed that the defendant shall offer certified copies of such deeds from said office.

1st. Act of sale by James White, judge of the Parish Court of Atakopas to J. N. Kershaw, made under fi. fa. in the
33 suit of John N. Kershaw vs. Samuel Watson, said deed being dated July 25th, 1809.

2nd. Act of sale from John N. Kershaw to Henry Johnson, said deed being dated July 24th, 1809.

3rd. Act of sale from Henry Johnson to Walter Brashear, said deed being dated August 5th, 1809.

II.

The original Marshal's deed to Henry B. Lawrence, made in April, 1869, in suit No. 161, of the docket of the United States Court, styled A. Warfield and others against Walter Brashear, being lost, a certified copy of said deed may be offered as recorded in the Clerk's office of St. Mary's Parish.

III.

The original record in the case of Heirs of Gonsoulin and others vs. Walter Brashear, No. 355, of the docket of the District Court of the Parish of St. Mary, being lost, and the transcript of appeal in said case, and all books and papers of the Supreme Court at Opelousas, to which said case was appealed, having been destroyed by fire, it is agreed that a certified copy of the judicial record of the proceedings had in said cause from the docket of the District Court of the Parish of St. Mary, shall be admitted in evidence, and that the opinion of the Supreme Court in the same case, as reported in 5th Martin, N. S., from page 33 to page 40, shall be offered and read in evidence on said trial.

(Signed) FARRAR, JONAS & KRUTTSCHNITT, Attys.
TODD & DAVIS, Attys. for Plffs.

(Indorsed:) Identified with bill of exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Company. No. 12,760. U. S. Circuit Court, Eastern District of Louisiana, Nunc pro tunc, as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

34 Sale from Samuel Watson to J. N. Kershaw.

Filed Nov. 12, 1901.

Offered by Defendant and Identified with Bill of Exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc Pro Tunc, as of November 13, 1901.

Whereas I, James White, judge of the Parish Court of Attakapas, by a writ of fieri facias directed to the constable of said parish against the goods and chattels, lands and tenements of Samuel Watson, at the suit of John N. Kershaw, did cause to be seized all that tract or parcel of land known by the name of Belle Isle, situated near the mouth of the Chefaliah in the parish aforesaid and having exposed the same to public sale according

to law John N. Kershaw became the purchaser thereof for the price of five hundred and fifty dollars in satisfaction for so much of the judgment obtained by said Kershaw against Samuel Watson aforesaid. Now, therefore, know all men by these presents that I, the said judge, do in consideration of the premises and virtue of the act in such case made and provided, grant, bargain, sell, assign and set over to the said John N. Kershaw, his heirs and assigns, all the above described tract or parcel of land, situated as aforesaid, containing the whole island of fifteen hundred acres, more or less, and all the right, title, interest or demand which the said Samuel Watson on the twenty-seventh day of February, one thousand, eight hundred and eight, as at any time since had in or to the said tract or parcel of land as aforesaid, or any part thereof, to hold the same to the said John N. Kershaw, his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal this twenty-fifth day of July, in the year of our Lord one thousand, eight hundred and nine, and in the year of the Independence of the United States, the thirty-fourth.

(Signed) JAS. WHITE, Ph. J.

Signed, sealed and delivered in the presence of
W. A. PARROTT,
WM. ADDISON.

State of Louisiana,
Parish of St. Martin.

I, Geo. S. Eastin, Dy. Clerk of the 19th Judicial District Court of the State of Louisiana, and ex-officio Dy. Re-
35 corder of the Parish of St. Martin, do hereby certify that the above is a true and correct copy of the original on file in this office.

In faith whereof, I have hereunto set my hand and seal of office, at St. Martinsville, Parish of St. Martin, La., this 11th day of January, A. D. 1901.

(Signed) GEO. S. EASTIN,
[Seal] Dy. Clerk.

(Indorsed:) Identified with bill of exception No. 1, in Heirs of Gonsoulin vs. Gulf Co. No. 12,760. U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Deed from J. N. Kershaw to Henry Johnson.

Offered by Defendant and Filed November 12, 1901.

Identified with Bill of Exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1901.

This indenture made this twenty-fourth day of July, in year of our Lord one thousand, eight hundred and nine, between John N. Kershaw of the Territory of Orleans and Parish of St. Martin, of the one part, and Henry Johnson, of the territory and parish aforesaid, of the other part, witnesseth:

That the said John W. Kershaw, for and in consideration of the sum of eight hundred dollars, lawful money of the United States, to him, the said John N. Kershaw, well and truly paid, the receipt whereof is hereby acknowledged, he, the said John N. Kershaw, hath granted, bargained and sold, and by these presents doth grant, bargain, sell unto the said Henry Johnson, his heirs and assigns, all that certain tract of land, called the Island of Belle Isle, situated near the mouth of the river Chafalia, in the parish aforesaid, containing fifteen hundred acres, more or less, together with all the appurtenances and advantages whatsoever, thereunto belonging or in any wise appurtaining; and all the estate, right, title, interest, claim and demand whatsoever of him, the said John N. Kershaw, of in and to the said tract or parcel of land, and every part hereof. To have and to hold the same, and every part and parcel
36 thereof, with appurtenances, unto the said Henry Johnson, his heirs and assigns forever. And the said John N. Kershaw, for himself and his heirs, the said tract or parcel of land and every part thereof, against him and his heirs, and against every other person or persons whatsoever to the said Henry Johnson, his heirs and assigns, will forever warrant and defend. In witness whereof I have hereunto set my hand and seal, the day and year before written.

(Signed) JNO. N. KERSHAW.

Witnesses:
E. D. WHITE,
LEVINA WHITE.

Signed and acknowledged before me this 25th of July, 1809.
(Signed) JAS. WHITE, Ph. J.

State of Louisiana,
Parish of St. Martin.

I, Geo. S. Eastin, Dy. Clerk of the 19th Judicial District Court of the State of Louisiana, and ex-officio Dy. Recorder of the Parish of St. Martin, do hereby certify that the above is a true and correct copy of the original on file in this office.

In faith whereof I have hereunto set my hand and seal of office, at St. Martinville, Parish of St. Martin, this 11th day of January, A. D. 1901.

(Signed) GEO. S. EASTIN,
[Seal] Dy. Clerk.

Identified with bill of exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co. No. 12,760. U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1901.
(Signed) CHARLES PARLANGE, U. S. Judge.

Deed of Sale from Henry Johnson to Walter Brashear.

Filed November 12, 1901.

Identified with Bill of Exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1901.

Know all men by these presents, that I, Henry Johnson, of the Territory of Orleans and Parish of St. Martin, for
37 and in consideration of the price of eight hundred dollars to me, in hand, paid by Walter Brashear, of the State of Kentucky, the receipt whereof is hereby acknowledged, have renounced, released and forever quit claimed, and do, by these presents, renounce, released and forever quit claim unto the said Walter Brashear, his heirs and assigns, forever, all my right, title, interest and claim of in and to a certain tract or parcel of land called Belle Isle, situated near the mouth of the river Chafalia, in the territory aforesaid, supposed to contain about fifteen hundred acres.

To have and to hold the same, together with the appurtenances thereunto belonging to the said Walter Brashear, his heirs and assigns, as fully and freely as at and before the ennating of these presents do hold the same and not otherwise.

In witness whereof, I have hereunto set my hand and seal,

this fifth day of August, in the year of our Lord one thousand, eight hundred and nine.

(Signed) H. JOHNSON.

Witnesses:
WM. MIGGS,
E. D. WHITE.

State of Louisiana,
Parish of St. Martin.

I, Geo. S. Eastin, Dy. Clerk of the 19th Judicial District Court of the State of Louisiana, and ex-officio Dy. Recorder of the Parish of St. Martin, do hereby certify that the above is a true and correct copy of the original on file in this office.

In faith whereof I have hereunto set my hand and seal of office at St. Martinville, Parish of St. Martin, La., this 11th day of January, A. D. 1901.

(Signed) GEO. S. EASTIN,
[Seal] Dy. Clerk.

Identified with bill of exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1901.

(Signed) CHARLES PARLANGE, U. S. Judge.

38 Deed from Walter Brashear to R. B. Lawrence.

Offered by Defendant. Filed November 12, 1901.

Identified with Bill of Exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1900.

No. 11,627. U. S. Marshal Sale.

ESTATE HEIRS WALTER BRASHEAR
TO
ROBERT B. LAWRENCE.

Whereas, I, F. J. Herron, Marshal of the United States, for the District of Louisiana, by virtue of a writ of fieri facias, directed to me by the Honorable, the Circuit Court of the United States, for the Fifth Judicial Circuit and Eastern District of Louisiana, at the suit of E. Warfields, et als., vs. The Heirs of Walter Brashear, No. 161, of the docket of said Court, after

having fulfilled and complied with all the previous legal requisites, did seize the following described property, to-wit:

1st. A tract of land formerly known as the "Tiger Land Plantation," lying of [off] the east side of Berwick Bay, in the Parish of St. Mary, bounded above by Flat Lake, below by Town of Brashear, and in the rear by land claimed by Florence and Knapp, which tract contains about (1,500) fifteen hundred acres, more or less.

2nd. A tract of land on the west side of Berwick Bay, in the Parish of St. Mary, bounded above by lands of John Rhodes and Penthrope, and below by lands of the heirs of Nathan Berwick, which tract was formerly known as "Golden Farm Plantation," and contains five hundred acres of land, more or less.

3rd. A tract of land fronting on Wax Bayou and Atchafalaya Bay, in the Parish of St. Mary, containing four hundred acres of land, more or less, and known as "Belle Isle Island."

4th. A house and lot in the town of Franklin, Parish of St. Mary, fronting 80 feet on Main street, 300 feet on Jackson street and 80 feet on First street, forming the corner of Main, Jackson and First streets.

5th. A house and lot in the town of Brashear, Parish
39 of St. Mary, known as lot No. 10, of square No. 1, and lots Nos. 1, 2, 3, 6, 7, 8, 9 & 10, of square No. 16.

Lots Nos. 1 to 9, inclusive of square No. 11.

Lots Nos. 1 to 7, inclusive, in square mkd L.

Lots Nos. 1 to 14, inclusive, in square No. 19.

Lots Nos. 1 to 13, inclusive, in square mkd J.

Lots in triangular piece, square or trak [tract] No. 12.

The lots in the town of Brashear as represented in Barnes survey and plan of the town of Brashear, and after having given due and legal notice to the said defendants of the said seizure in the manner pointed out by law, I advertised the said property for sale, after the expiration of the proper legal delay from the time of service of said notices, by advertisemens composed in English, announcing the sale to take place at the Courthouse, in the town of Franklin, Parish of St. Mary, State of Louisiana, on the 24th day of April, 1869, at the hour of 12 o'clock, m.

Said advertisements were inserted and published in two papers, to-wit: in the "Commercial Bulletin," in the City of New Orleans, and in the "Attakapas Register," printed and published in the town of Franklin, Parish of St. Mary, from the 20th day of March, 1869, to the day of sale, being full thirty days from the date of the first publication in said newspapers; said advertisements were inserted and published in said newspapers on the 20th & 27th March, 1869, and on the 3rd, 10th, 17th & 24th of April, 1869.

And after having further complied with and performed all

the additional previous legal requisites, and after having the said property appraised, I do expose the same at public sale at auction, according to law, at the said Courthouse, in the town of Franklin, Parish of St. Mary, on the said 24th day of April, 1869, at 12 o'clock m., of that day and at the time and place of sale, I did read, verbatim, in a loud and audible tone of voice, the certificate of the Recorder of Mortgages, of the Parish of St. Mary, dated April 20th, 1869, and by which certificate it appears that there are no other mortgages resting against the said before described property than the following, to-wit:

1st. A special mortgage in the name of Nancy P. Brashear in favor of the estate of Robert B. and Thomas T. Brashear securing the payment of one hundred and fifty thousand dollars, with eight per cent. per annum interest, from June 30th, 1860. Recorded July 3, 1860.

2nd. A judicial mortgage, E. Warfield vs. Walter Brashear, for thirty thousand dollars with six per cent. per annum interest from September 17th, 1839, the settlement and adjustment of all the liabilities of administrator, heirs and devisees of R. R. Barr, deceased, and all costs of suit.

3rd. A judicial mortgage, Susana Ireland vs. Succession of Robert B. Brashear for $7,496.44—100, with ten per cent. per annum interest from June 2, 1853, and all costs. Recorded September 25, 1866.

4th. A judicial mortgage, Henry E. Lawrence vs. R. B. Brashear, cancelling sale and for all costs in suit No. 4832. Recorded November 5th, 1866.

5th. A judicial mortgage, E. Warfield et als. vs. Heirs of Walter Brashear, decreeing that the judgment rendered January 14th, 1840, against Walter Brashear, be revised and made executory against his heirs and legal representatives, with costs. Recorded June 16th, 1867.

6th. State and other taxes, $116.00. Recorded December 10, 1866.

7th. State and other taxes, $98.76-100. Recorded December 20, 1867.

8th. A judicial mortgage, Madison C. Johnson vs. J. B. Murphy, administrator, that the judgment, Madison C. Johnson vs. Walter Brashear, rendered by the Supreme Court September 23rd, 1843, be received and to have full force and effect in law and that H. E. Lawrence, dative testamentatory executor of Walter Brashear, deceased, be decreed to allow said judgment, and to pay the same in due course of administration. Recorded October 13th, 1868.

9th. State and other taxes $201.60-100.

When after announcing to the bystanders the terms and conditions of the sale and after duly crying the said property it

was all (with the exception of the house and lot 4thly described on the first page hereof, adjudicated to Robert B. Lawrence of ————, he being the last and highest bidder thereon for the price and sum of $14,537, fourteen thousand five hundred and thirty-seven dollars cash in U. S. Treasury notes, which sum I hereby acknowledge to have received in ready current money of the United States, and the said purchaser assumes the payment of all taxes of every nature and description which may now be due on the said property, or which may hereafter be found to exist against it.

Now, therefore, know all men by these presents, That I, the said marshal, in consideration of the premises, and by virtue of the law in such case made and provided, do sell and transfer the said before described property (with the exception above noted), to the said Robert B. Lawrence, and all the rights and titles which the said heirs of Walter Brashear had into
41 the said before described property, to have and to hold the same to the said Robert B. Lawrence, his heirs and assigns forever.

In witness whereof I have hereto signed my name at New Orleans in the State of Louisiana, this the 30th day of April, in the year one thousand eight hundred and sixty-nine and the 93rd year of the Independence of the United States of America.

(Signed) F. J. HERRON,
U. S. Marshal, District of Louisiana.

Signed in presence of

I. R. WEST,
C. L. EDE.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

Clerk's Office.

I hereby certify the foregoing deed of sale was this day duly recorded in this office in Book of Sales No. 2 folio 321, 322, 323 and 324.

Witness my hand and seal of said Court at New Orleans this 5th day of June, 1869.

(Signed) D. URBREN, Clerk.
G. F. D. VINOT, Dy. Clerk.

I, Joseph A. Loret, Clerk of the 23rd Judicial District Court of Louisiana and Ex-Officio Recorder in and for the Parish of St. Mary, do hereby certify that the above and foregoing is a

true and correct copy of and from the books of record of my office which said record is duly recorded in Book Q of Conveyances at page No. 95, under entry No. 11,627, and was duly recorded thereon on the 15th day of June, 1869.

In testimony whereof I have hereunto set my hand officially and affixed the seal of my office on this 22nd day of January, A. D. 1901.

[Seal] (Signed) J. A. LORET,
Clerk and Ex-Officio Recorder.

(1 Cancelled U. S. Int. Rev.)
(10c Documentary Stamp.)

(Indorsed:) Identified with bill of exceptions No. 1 in Heirs of Gonsoulin vs. Gulf Co. No. 12,760 U. S. Circiut Court, Eastern District of Louisiana. Nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

42 Act of Sale From R. B. Laurence to R. S. Withers.

Dated July 20th, 1892.

Offered by defendant and filed November 12, 1901, in case of Heirs of Gonsoulin vs. The Gulf Company, No. 12,760. U. S. Circuit Court, Eastern District of Louisiana.

Made Part of Bill of Exceptions No. 1, November 13, 1901.

No. 321. State of Louisiana, City of New Orleans.

Cash Sale of Property,

ROBERT B. LAWRENCE
TO
ROBERT S. WITHERS.

20th of July, 1892.

Be it known, that on this twentieth day of July in the year of Our Lord one thousand eight hundred and ninety-two.

Before me, Marcel T. Ducros, a notary public in and for the City and Parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn.

Personally came and appeared, William W. Handlin, herein acting in his capacity as agent and attorney in fact of Robert B. Lawrence of Tom's River, in the State of New Jersey, duly appointed by act of procuration under private signature dated the 13th of April, 1892, the same day acknowledged before T.

W. Carnichall, a notary public in Ocean County, New Jersey, and hereto annexed for reference, who declared that for and in consideration of the price and sum of eight thousand dollars to him in hand well and truly paid in ready money of the United States receipt whereof is hereby acknowledged and full acquittance and discharge granted for the same he does by these presents, grant, bargain, sell, convey, transfer, assign and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever unto Robert S. Withers a citizen of the State of Mississippi, whose domicile is at Edwards, Hinds County, in said State, he being here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following described property to-wit:

A certain tract of land called Belle Isle, situate, lying and being in the Parish of St. Mary, State of Louisiana, bounded on the west by Wax Bayou, upon which said island
43 fronts, and on the south by Atchafalaya Bay, and on the east by Doctor's Bayou, containing four hundred acres high land, more or less, and twenty-four hundred acres sea marsh, or pasture lands, in all twenty-eight hundred acres more or less.

Said property was acquired by said vendor at an execution sale by the United States marshal April 13th, A. D. 1869, in the suit of E. Warfield and al vs. the heirs of Walter Brashear, No. 160 in the 5th Circuit of the Eastern District of Louisiana; the said Walter Brashear having acquired said land by deed from Henry Johnson August the 5th, 1809, hereto annexed.

The said attorney in fact declares that all taxes including 1890 are paid, that he binds his constituents to pay the taxes of 1891 in due course the purchaser hereby assumes all taxes of 1892. The said attorney in fact declares that his said principal, Robert B. Lawrence, was a batchelor in 1869 when he purchased the herein conveyed property and that he had never been married previous to said date.

The parties dispense with certificate required by article 3364 Civil Code of this State and exonerate the undersigned notary from all responsibility in the premises.

By the annexed certificate of the Register of Conveyances for this City and Parish, dated the —— day of ———, 18——, it does not appear that said property has been alienated by said vendor.

To have and to hold the said property and appurtenances unto the said purchaser his heirs and assigns to their proper use and behoof forever.

And the said attorney in fact for said constituent the said

property and appurtenances to the said purchaser his heirs and assigns shall and will warrant and forever defend against the lawful claims of all persons whomsoever, by these presents. And the said attorney in fact does moreover subrogate the said purchaser to all the rights and actions of warranty, which his constituent has or may have against his own vendor or against the vendors of his vendor, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as he himself might or could have done.

Thus done and passed, in my office at New Orleans, on the day, month and year first above written in the presence of Messieurs Frank Underwood Rochester and Henry W. Verlander, witnesses, of lawful age, domiciliated in this city,
44 and therein residing who have signed their names, with the said appearers and me, notary, after reading thereof.

W. W. HANDLIN,
R. S. WITHERS,
M. T. DUCROS,
Notary Public.

F. U. ROCHESTER,
H. M. VERLANDER.

Clerk's Office St. Mary Parish Louisiana.

I certify that the within and foregoing act of sale has been duly recorded in Book B. B. of Conveyances page 538, Entry No. 19,564 of my office, inscribed therein on the 29th day of July, A. D. 1892.

In evidence whereof witness my hand and official seal this 30th day of July, A. D. 1892.

J. B. VERDUN, JR., Deputy Clerk.

I, the undersigned Peter Stifft, custodian of Notarial Records, do hereby certify that the above and foregoing is a true and correct copy of the original on file and or record in my office.

New Orleans, January 9th, 1901.

(Signed) PETER STIFFT,
Custodian Notarial Records,
Parish of Orleans.

[Seal]

(2 cancelled U. S. Int. Rev.)
(5c Documentary Stamps.)

(Indorsed:) Identified with bill of exceptions No. 1 in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court Eastern District of Louisiana. Nune pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Sale of Real Estate by Robert Sharkey Withers to Gustave Sylvan Dorwin.

Offered by Defendant and filed November 12, 1901.

In case of Heirs of Gonsoulin vs. The Gulf Company, No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Identified with Bill of Exceptions No. 1, nunc pro tunc as of November 13th, 1901.

45 **Sale of Property by Robert Sharkey Withers, to Gustave Sylvan Dorwin.**

United States of America,
State of Louisiana,
Parish of Orleans,
City of New Orleans.

Be it known, that on this fifteenth day of the month of May, in the year of Our Lord, one thousand eight hundred and ninety-seven, and of the Independence of the United States of America, the one hundred and twenty-first;

Before me, Charles Theodore Sonait, a notary public, duly commissioned and qualified in and for this City and Parish of Orleans, and in the presence of the witnesses hereinafter named and undersigned:

Personally came and appeared:

Robert Sharkey Withers, Esq., a resident of Hinds County, in the State of Mississippi, who declared that he does by these presents grant, bargain, sell, convey, assign, set over, and deliver, with all legal warranties, and with full substitution and subrogation in and to all the rights and actions of warranty which he has or may have against all preceding owners, and vendors, unto Gustave Sylvan Dorwin, of the City and State of New York, here present and accepting said sale with the conditions and limitations thereto attached, the following described property, to-wit:

A certain tract of land, called Belle Isle, situate, lying and being in the Parish of St. Mary, State of Louisiana, bounded on the west by Wax Bayou, upon which said land fronts, and on the south by Atchafalaya Bay, and on the east by Doctor's Bayou, containing four hundred (400) acres high land, more or less, and twenty-four hundred (2400) acres sea marsh or pasture lands, in all, twenty-eight hundred (2800) acres, more or less.

Being the same property acquired by the vendor from Robert B. Laurence, by act between M. T. Ducros, notary, on July 29th, 1892.

To have and to hold the above described property unto the said purchaser, his heirs and assigns forever.

This sale is made and accepted for and on consideration of the price and sum of seventy-five thousand dollars ($75,000), of which said amount the purchaser has paid in cash the sum of one thousand dollars ($1,000.00), the receipt of which is hereby acknowledged, and the balance of said sum is to be paid as follows: Fourteen thousand dollars ($14,000.00), on July 1st, 1898; fifteen thousand dollars ($15,000.00) on July 46 1st, 1899; fifteen thousand dollars ($15,000.00) on July 1st, 1900; fifteen thousand dollars ($15,000.00) on July 1st, 1901; and fifteen thousand dollars ($15,000.00) on July 1st, 1902. The last four installments to be represented by the notes hereinafter mentioned.

This sale is made upon the following conditions, which are hereby mutually declared to be express resolutory conditions:

1st. That the purchaser shall have until July 1st, 1898, to examine the title to the above described property, and if he is not satisfied with said title, this sale is, by the written expression of such dissatisfaction addressed to the vendor, to be ipso facto dissolved of right.

2nd. That the purchaser shall have until July 1st, 1898, to make by means of digging or borings, upon suitable parts of the above described property, explorations to determine the extent and value of the mineral deposits on said property, and to satisfy himself of such value, and for that purpose he shall have the right of entry upon and possession of said property, subject, however, to the obligation that no waste is to be committed in making said explorations, nor any unreasonable and improper use made of this privilege of exploration.

3rd. That unless the said purchaser shall on or before July 1st, 1898, pay to the said vendor, the sum of fourteen thousand dollars ($14,000.00), in cash, and deliver to him his four notes for fifteen thousand dollars ($15,000.00) each, dated July 1st, 1898, bearing six per cent. per annum interest from date, and payable one, two, three and four years from date, and paraphed so as to identify them with this act by the undersigned notary, or by some other notary, and secured by mortgage and vendor's privilege on all the property herein conveyed; then, and in that event, this Act of Sale is to be ipso facto null and void and of no effect as to both parties hereto by the mere lapse of time, and neither vendor nor vendee shall have any further right under the same.

It is expressly agreed and understood that in case this sale should be dissolved as aforesaid, then the vendor shall be entitled to retain the one thousand dollars ($1,000.00) paid him in cash at the time of the signing hereof, and the vendee shall have no claim therefor; and that all structures and improvements immovable by nature placed on said property up to July 1st, 1898, by the vendee, shall become the property of the vendor without any right of remuneration therefor by the vendee.

It is further expressly agreed and understood that this deed is not intended to convey to the purchaser any claim to forty-nine one-hundredths of the mineral rights in the property
47 hereby conveyed, which rights are claimed by Captain A. F. Lucas, and which claim is well known to the purchaser herein. The parties hereto specially waive the production of the mortgage and conveyance certificates required by law and agree to hold me, notary, harmless in the premises.

All State and Parish taxes on the above described property above described, except those of the current year, 1897, which are not yet assessed, have been paid, and the vendor obligates himself especially to pay these taxes when they become due.

Thus done and passed, in my office, at the City of New Orleans, on the day, month and year first above written, in the presence of Messieurs Edgar H. Farrar and Dennis O'Day, competent witnesses, who hereunto sign their names with the said appearers, and me notary, after reading of the whole,

Original Signed:

ROBERT SHARKEY WITHERS,
GUSTAVE S. DORWIN,
D. O'DAY,
E. H. FARRAR,
CHAS. T. SONIAT, Notary Public.

Clerk's Office, Parish of St. Mary, La.

I hereby certify that the foregoing act has been duly recorded in Book 39 of Mortgages, No. 26,049, page 652, and Book "G" of Conveyances, Entry No. 23,584, page 788, of my office.

Inscribed therein on the 18th day of May, A. D. 1897.

In evidence whereof, witness my hand and official seal, this 24th day of May, A. D. 1897.

(Signed) JNO. R. PARKERSON,
[Seal] Clerk and Ex-Officio Recorder.

I, the undersigned notary, do hereby certify that the foregoing is a true copy of the original act of record in my office.

In faith whereof, I grant these presents, under my signature

and the impress of my official seal, this sixteenth day of the month of January, A. D. 1901.

[Seal] (Signed) CHAS. T. SONIAT,
Notary Public.

(Cancelled U. S. Int. Rev. 10c Documentary Stamp.)

Identified with Bill of Exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co. No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1901. Charles Parlange, U. S. Judge.

48 Affidavit of A. F. Lucas.

Filed November 12th, 1901.

Identified with Bill of Exception No. 1, nunc pro tunc as of November 13th, 1901.

THE HEIRS OF GONSOULIN,
VS.
THE GULF COMPANY.

State of Louisiana,
Parish of Orleans.

Personally came and appeared before me, the undersigned authority, Anthony F. Lucas, formerly of the Avery's Island, Louisiana, now of Washington, D. C., who being duly sworn, deposes and says:

That on or about the 14th day of July, 1896, affiant entered into a contract with one R. S. Withers, of Edwards, Mississippi, who is the owner of a certain island, situated in the Parish of St. Mary, in this State, known as Belle Isle, as will more fully appear by the written contract signed by the said R. S. Withers, and recorded in the conveyance office, Book GG, page 15, Entry 23043, on the 21st day of September, 1896.

That under and by virtue of said contract affiant was given the right to enter upon the said Belle Isle and explore the same for any minerals, oils, gas or any minerals whatever, by digging, boring, or mining, until the first day of March, 1897; and that it was provided in the said contract that if affiant should, during the said period, and by such exploration find any minerals whatsoever through his explorations that may prove of commercial value, affiant was to be entitled to forty-nine one hundredths (49-100ths) of all the mineral rights contained upon said island, and that any profits thereon accruing, by

outright sales or royalties, should be divided between the said R. S. Withers and affiant, the said A. F. Lucas.

That in accordance with the said contract, affiant entered upon said island, for the purpose of exploration under the said contract, and during the months of October, November and December, 1896, made borings upon the said island, and in the progress of said borings discovered a large deposit of sulphur, of petroleum oil, and of rock salt.

That affiant has therefore completed his contract with the said R. S. Withers, has fully complied with the same, and is entitled under the contract to forty-nine one-hundredths
49 (49-100ths) interest in the said deposits of sulphur, petroleum and salt situated upon the said Island of Belle Isle, and hereby puts of record in the Conveyance Books of the Parish of St. Mary this proof of the compliance of the contract, and of his rights under the said agreement heretofore recorded, as above set forth.

(Signed) ANTHONY F. LUCAS.

Sworn to and subscribed before me, this 17th day of February, 1897. [Seal]

(Signed) HEWES T. GURLEY,
Notary Public.

Clerk's Office, Parish of St. Mary, La.

I hereby certify that the foregoing has been duly recorded in Book "GG" of Conveyances, page 485, Entry 23,372. Inscribed therein on the 18th day of February, 1897.

In evidence whereof witness my hand and official seal this 23rd day of February, A. D. 1897.

[Seal] (Signed) JNO. R. PARKERSON, Clerk.

(Indorsed:) Identified with bill of exception No. 1 in Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Act of Sale from Anthony Francis Lucas to Gustave Sylvan Dorwin.

Offered by Defendant and filed Nov. 12, 1901, in case of Heirs of Gonsoulin vs. Gulf Company, No. 12,760, U. S. Circuit Court, Eastern District of Louisiana.

Identified with Bill of Exceptions No. 1, nunc pro tunc as of November 13, 1901.

Know all men by these presents, that I, Anthony Francis

Lucas, of Washington, D. C., do hereby grant, bargain, sell, convey, assign, transfer, set over and deliver unto Gustave Sylvan Dorwin, of New York City, New York, all my right, title and interest of every kind and nature in and to that certain piece or parcel of land known as "Belle Isle," lying, being and situated in the Parish of St. Mary, in the State of Louisiana, more particularly described in a deed dated May 15th, 1897, from Robert S. Withers to said Dorwin, passed before Charles T. Soniat, notary public, in the City of New Orleans, and more particularly all my right, title and interest in and to forty-nine one hundredths (49-100ths) of all the mineral rights in said property, and also any rights, title or interests by and under a certain contract between Robert S. Withers and the undersigned, dated the 14th day of July, 1896.

This sale is made for the price and sum of fifty thousand dollars ($50,000.00) of which five thousand dollars ($5,000.00) is to be paid on the first day of July, 1898; five thousand dollars ($5,000.00) on the first day of January, 1899, five thousand dollars ($5,000.00) on the first day of July, 1899, and thirty thousand dollars ($30,000.00) on the first day of July, 1901, together with six per cent. per annum interest upon all of these instalments, from the first day of July, 1898.

This sale is made and accepted upon the following conditions, all and each of which are declared to be express resolutory conditions:

1st. That none of the resolutory conditions, mentioned in the deed, above referred to, from Withers to Dorwin, shall have happened on or before the first day of July, 1898.

2nd. That on or before July 1st, 1898, the said Dorwin shall pay to the undersigned grantor herein the sum of five thousand dollars ($5,000.00) in cash, and shall deliver to him his notes for the balance of said instalments, bearing interest at six per cent. from July 1st, 1898, and secured by vendor's privilege and mortgage upon all of the rights herein and hereby conveyed, said notes to be properly identified with this act of sale by a proper acknowledgement executed by the said Dorwin.

Thus done and signed this 17th day of May, 1897.

(Signed) ANTHONY F. LUCAS,
(Signed) GUSTAVE S. DORWIN.

Witness:
(Signed) ABRAHAM GOLDBERG,
(Signed) WM. R. MANSON.
Witnesses as to G. S. Dorwin:
(Signed) JOSEPH KELLY,
(Signed) ARCHIBALD A. McGLASHAN.

State of Louisiana,
Parish of Orleans,
City of New Orleans, ss.

Personally came and appeared before me, Hewes T. Gurley, a notary public, in and for the Parish of Orleans, duly commissioned and qualified, Anthony Francis Lucas, who acknowledged to me, notary, in the presence of Abraham Gold-
51 berg and Wm. R. Mason, competent witnesses, that he had signed, sealed and delivered the foregoing instrument for the purposes therein mentioned.

In testimony whereof, I have caused the said witnesses to sign this acknowledgment with me, notary, on this 17th day of May, 1897. (Signed) HEWES T. GURLEY,
Not. Pub.

Witness:
(Signed) ABRAHAM GOLDBERG,
(Signed) WM. R. MASON.

State of New York,
County of New York,
City of New York, ss.

Personally came and appeared before me, Alfred Mackay, a commissioner for the State of Louisiana, in and for the State of New York, residing in said County and City of New York, and in the presence of the undersigned witnesses, Gustave Sylvan Dorwin, who acknowledged to me, commissioner, in the presence of Joseph Kelly and Archibald A. McGlashan, competent witnesses, that he had signed, sealed and delivered the foregoing instrument, for the purposes therein mentioned.

In witness whereof, I have caused the said Dorwin, and the said witnesses to sign this acknowledgement with me, commissioner, on this 28th day of May, 1897.

GUSTAVE S. DORWIN.
(Signed) JOSEPH KELLY,
(Signed) ARCHIBALD McGLASHAN,
[Seal] (Signed) ALFRED MACKAY,
Commissioner for State of Louisiana in New York.

Office and Postoffice address, The Mutual Life Building, No. 50 Cedar Street, New York City, New York.

Clerk's Office,
Parish of St. Mary, La.

I hereby certify that the foregoing has been duly recorded in books "HH" of conveyances, entry No. 23613, page 41, and

"39" of mortgages, entry No. 26079, page 714 of my office; inscribed therein on the 6th day of June, A. D. 1897.

In evidence whereof, witness my hand and official seal this 8th day of June, 1897.

[Seal] (Signed) JNO. R. PARKERSON,
Clerk and Ex-Officio Recorder.

(Indorsed:) Identified with bill of exceptions No. 1 in
52 Gonsoulin vs. Gulf Co., No. 12760, U. S. Circuit Court, Eastern District of Louisiana, nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Mortgage by Gustave Sylvan Dorwin to Anthony Francis Lucas, March 2, 1898.

Filed November 12, 1901.

Identified with Bill of Exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12760, U. S. Circuit Court, Eastern District of Louisiana, nunc pro tunc as of November 13th, 1901.

United States of America, State of Louisiana, City of New Orleans.

Mortgage by Gustave Sylvan Dorwin to Anthony Francis Lucas.

Be it known, that on this second day of the month of March, in the year of our Lord one thousand eight hundred and ninety-eight (1898), and of the independence of the United States of America the one hundred and twenty-second, before me, Charles Theodore Soniat, a notary public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared, Gustave Sylvan Dorwin, a resident of the City of New York, State of New York, who declared that he is justly and truly indebted unto Anthony Francis Lucas, a resident of Washington, D. C., in the full sum of forty-five thousand dollars ($45,000.00), representing the credit portion of the purchase price of all right, title and interest in and to forty-nine one-hundred (49-100) of all the mineral rights in the property known as Belle Isle, described below, sold by said Anthony Francis Lucas to said Gustave Sylvan Dorwin, as per act under private signature, dated the 17th day of May, 1897, and duly acknowledged by Gustave

Sylvan Dorwin before Alfred Mackay, commissioner for Louisiana in New York, on May 28th, 1897, and duly acknowledged by Anthony Francis Lucas before Hewes T. Gurley, notary public for Orleans Parish, on May 17th, 1897, and for the pay-
53 ment of which sum the said Gustave Sylvan Dorwin has made and subscribed four promissory notes, dated July 1st, 1898, to the order of and indorsed by himself: One for the sum of five thousand dollars ($5,000.00) payable on the first day of January, 1899; one for the sum of five thousand dollars ($5,000.00), payable on the first day of July, 1899; one for the sum of five thousand dollars ($5,000.00), payable on the first day of July, 1900, and one for the sum of thirty thousand dollars ($30,000.00), and payable on the first day of July, 1901, bearing Nos. one, two, three and four, and bearing interest at the rate of six per cent. per annum from the first day of July, 1898, until final payment.

Which notes, after having been paraphed Ne Varietur by me, notary, for identification herewith, and having been delivered unto the said Anthony Francis Lucas, here present, who acknowledges due receipt thereof.

It is agreed that in case it shall become necessary to institute legal proceedings for the recovery of the amount of said notes or of any part thereof, the said Gustave Sylvan Dorwin binds himself to pay the fees of the attorney at law who may be employed for that purpose; which fees are hereby fixed at five per cent. on the amount sued for.

Now, in order to secure the full and punctual payment of the said notes at maturity, together with all eventual interest, attorney's fees, hereinabove mentioned, costs of Court, charges and expenses whatsoever, including insurance premiums, the said Gustave Sylvan Dorwin, declared that he does by these presents mortgage, affect and specially hypothecate, in favor of the said Anthony Francis Lucas, here present and accepting, and of all future holder or holders of said notes, the followering, [following], to-wit: The forty-nine one-hundredths (49-100) of all the mineral rights in and to the followering [following] described property, to-wit:

A certain tract of land, called the Belle Isle, situated, lying, and being in the Parish of St. Mary, State of Louisiana, bounded on the weast [west] by Wax Bayou; upon which said island fronts, and on the south by Atchafalaya Bay, and on the east by Doctor's Bayou; containing four hundred (400) acres high land, more or less, and twenty-four hundred (2400) acres sea marsh or pasture lands; in all twenty-eight hundred (2800) acres, more or less.

Being the same property which was acquired by the said G. S. Dorwin, from R. S. Withers, as per act passed before the

undersigned notary on May 15th, 1897, and registered in Book "GG" of Conveyances of the Parish of St. Mary, Louisiana, Entry Number 23584, page 788, and by the deed of Anthony Francis Lucas to Gustave Sylvan Dorwin, dated May 54 17th, 1897, and recorded in Book "HH" of Conveyances, page 714 of the Parish of St. Mary, Louisiana, on the 8th of June, 1897.

It is hereby specially acknowledged that the above notes are executed according to the agreement contained in said deed of May 17th, 1897, and that they represent the credit portion of the purchase price of said 49-100 of the mineral rights in and to said property, and that the said notes are secured by the vendor's lien on same.

The said premises are so to remain mortgaged and hypothecated until the full and final payment of the aforesaid promissory notes, the said mortgagor binding himself and his heirs not to sell, alienate or encumber the same to the prejudice of this act.

The said mortgagor does not hereby confess judgment in favor of said mortgagee and such person or persons who may be the holder or holders of said promissory notes for the full amount thereof, capital and interest, and together with all fees, costs, charges and expenses whatsoever as aforesaid.

And the said mortgagor further declared that in the event of the said promissory notes not being punctually paid at maturity, it shall be lawful for, and he does hereby authorize the said mortgagee or any holder or holders thereof, to cause all and singular the forty-nine hundredths of the mineral rights in and to said property hereinbefore described and herein mortgaged, to be seized and sold, under executory process or under writ of fiere facias, issued in execution of an ordinary judgment, obtained on the notes hereinabove mentioned, without appraisement, to the highest bidder, payable in cash; the mortgagee hereby expressly dispensing with all and every appraisement thereof, and by these presents, waiving and renouncing the benefit of appraisement and of all laws or parts of laws relative to the appraisement of property seized and sold under executory or other legal process.

The parties hereto do hereby dispense with the production of a mortgage certificate from the office of the Recorder of Parish of St. Mary, in the name of Gustave Sylvan Dorwin against the above described property, as required by law, and they do hereby enororate the undersigned notary from any and all responsibility in the premises.

The parties do hereby take upon themselves the right and privilege of having this act recorded in the Mortgage Book of the Recorder's Office in and for the Parish of St. Mary, as re-

quired by law, hereby dispensing the undersigned notary from recording the same and exonorating the said undersigned notary from any and all responsibility as to recording of same.

Thus done and passed, at my office, in this city, the day,
55 month and year first above written, in the presence of Messieirs Meloney C. Sonit and Louis Rene Villars,——— competent witnesses, residing in this city, who have hereunto signed their names with appearers and me, notary, after the reading of the whole.

Original signed:

GUSTAVE S. DORWIN,
ANTHONY F. LUCAS,
M. C. SONIAT,
L. RENE VILLARS,
CHAS. T. SONIAT, Not. Pub.

I, the undersigned notary, do hereby certify that the foregoing is a true copy of the original act of record in my office.

In faith whereof, I grant these presents, under my signature and the impress of my official seal, this second day of the month of March, A. D. 1898. (Signed) CHARLES T. SONIAT,

[Seal] Not. Pub.

Clerk's Office,
Parish of St. Mary, La.

I, John R. Parkerson, clerk and ex-officio recorder in and for the Parish of St. Mary, Louisiana, do hereby certify that the above and foregoing act of mortgage has been duly recorded in book "40" of mortgages, page 681, entry No. 26511, and "II" of conveyances, page 77, entry No. 24083, of my office; inscribed therein on the 5th day of March, 1898.

In evidence whereof witness my hand and official seal, this 11th day of March, A. D. 1898.

(Signed) JNO. R. PARKERSON,

[Seal] Clerk and ex-Officio Recorder.

(Indorsed:) Identified with bill of exceptions No. 1 in Heirs of Gonsoulin vs. Gulf Co., No. 12760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

56 **Mortgage to Robert Sharkey Withers by Gustave Sylvan Dorwin.**

Filed Nov. 12th, 1901, in case of Heirs of Gonsoulin vs. Gulf Co., No. 12760; U. S. Circuit Court, Eastern District of Louisiana—Identified with Bill of Exceptions No. 1, nunc pro tunc as of November 13th, 1901.

No.....

United States of America,
State of Louisiana,
City of New Orleans.

Mortgage

to

ROBERT SHARKEY WITHERS

By

GUSTAVE SYLVAN DORWIN.

Be it known, that on this seventh day of the month of February, in the year of our Lord, one thousand eight hundred and ninety-eight (1898), and of the Independence of the United States of America, the one hundred and twenty-second:

Before me, Charles Theodore Soniat, a notary public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, and in the presence of the witnesses, hereinafter named and undersigned:

Personally came and appeared, Gustave Sylvan Dorwin, a resident of the City of New York, State of New York, who declared that he is justly and truly indebted unto Robert Sharkey Withers, a resident of Hinds County, in the State of Mississippi, in the full sum of sixty thousand ($60,000) dollars, representing the credit portion of the purchase price of the property known as "Belle Isle," described below, sold by the said Withers to the said Dorwin, by act passed before the undersigned notary on May 15th, 1897, and for the payment of which sum the said Gustave Sylvan Dorwin has made and subscribed four promissory notes, dated July 1st, 1898, to order of and endorsed by himself, each for the sum of fifteen thousand ($15,000) dollars, payable respectively, in one, two, three and four years after date, and bearing numbers one, two, three and four, and bearing interest at the rate of eight (8%) per cent. per annum from date until final payment.

Which notes after having been paraphed Ne Varietur by me,

notary, for identification herewith, and with the said deed of sale, dated May 15th, 1897, have been delivered unto the
57 said Robert Sharkey Withers, here present, who acknowledges due receipt thereof.

It is agreed that in case it shall become necessary to institute legal proceedings for the recovery of the amount of said notes, or of any part thereof, the said Gustave Sylvan Dorwin binds himself to pay the fees of the attorney at law, who may be employed for that purpose, which fees are hereby fixed at five (5%) per cent. on the amount sued for.

Now, in order to secure the full and punctual payment of the said notes at maturity, together with all eventual interest, attorney's fees hereinbefore mentioned, costs of Court, charges and expenses whatsoever, including insurance premium, the said Gustave Sylvan Dorwin declared that he does by these presents, mortgage, affect and specially hypothecate, in favor of the said Robert Sharkey Withers, here present and accepting, and of all future holder or holders of said notes, the following described property, to-wit:

A certain tract of land called the Belle Isle, situated, lying and being in the Parish of St. Mary, State of Louisiana, bounded on the west by Wax Bayou, upon which said island fronts, and on the south by Atchafalaya Bay, and on the east by Doctor's Bayou, containing four hundred (400) acres high land, more or less, and twenty-four hundred (2400) acres sea marsh or pasture lands, in all twenty-eight hundred (2800) acres, more or less.

Being the same property which was acquired by the said G. S. Dorwin from R. S. Withers as per act passed before the undersigned notary on May 15th, 1897, and registered in book "GG" of Conveyances of the Parish of St. Mary, Louisiana, entry number 23,584, page 788.

It is hereby specially acknowledged that the above notes are executed according to the agreement contained in said deed, and that they represent the credit portion of the purchase price of said property, and that the said notes are secured by vendor's lien on said property.

The said premises are so to remain mortgaged and hypothecated until the full and final payment of the aforesaid promissory notes, the said mortgagor binding himself and his heirs not to sell, alienate or encumber the same to the prejudice of this act.

The said mortgagor does not hereby confess judgment in favor of said mortgagee, and such person or persons who may be the holder or holders of said promissory notes for the full amount thereof, capital and interest, and together with all fees, costs, charges and expenses whatsoever as aforesaid.

And the said mortgagor further declared that in event
58 of the said promissory notes not being punctually paid at maturity, it shall be lawful for, and he does hereby authorize the said mortgagee, or any holder or holders thereof, to cause all and singular the property hereinbefore described and herein mortgaged, to be seized and sold, under executory process or under writ of fieri facias issued in execution of an ordinary judgment obtained on the notes hereinabove mentioned, without appraisement, to the highest bidder, payable cash; the mortgagee hereby expressly dispensing with all and every appraisement thereof, and by these presents, waiving and renouncing the benefit of appraisement and of all law or parts of laws relative to the appraisement of property seized and sold, under executory or other legal process.

The parties hereto do hereby dispense with the production of a mortgage certificate from the office of the recorder of the Parish of St. Mary, in the name of Gustave Sylvan Dorwin against the above and before described property....., and they do hereby exonerate the undersigned notary from any and all responsibility in the premises.

The parties do hereby take upon themselves the right and privilege of having this act recorded in the mortgage book of the recorder's office in and for the Parish of St. Mary, as required by law, hereby dispensing the undersigned notary from recording the same and exonerating the undersigned notary from any and all responsibility as to the recording of same.

Thus done and passed at my office, in the City of New Orleans, on the day, month and year hereinabove mentioned, in the presence of Messrs. Edgar H. Farrar and Harry H. Waters, competent witnesses, residing in this city, who have hereunto signed their names with appearers and me, notary, after due reading of the whole.

(Original signed:) GUSTAVE S. DORWIN,
R. S. WITHERS,
CHAS. T. SONIAT, Not. Pub.

Attest:

EDGAR H. FARRAR,
H. H. WATERS.

I, the undersigned notary, do hereby certify that the foregoing is a true copy of the original act of the record in my office.

In faith whereof, I grant these presents under the impress of my official seal and official signature, this seventh day of February, A. D. 1898. (Signed) CHARLES T. SONIAT,
[Seal] Not. Pub.

59 Clerk's Office,
Parish of St. Mary, La.

I, John R. Parkerson, Clerk and ex-officio recorder in and for the Parish of St. Mary, Louisiana, do hereby certify that the above and foregoing act of mortgage has been duly recorded in books "40" of mortgages, page 678, entry 26510, and "II" of conveyances, page 75, entry No. 24082, of my office; inscribed therein on the 5th day of March, A. D. 1898.

In evidence whereof witness my hand and official seal this 11th day of March, A. D. 1898.

(Signed) JNO. R. PARKERSON,
[Seal] Clerk and ex-Officio Recorder.

(Indorsed:) Identified with bill of exception No. 1, in heirs of Gonsoulin vs. Gulf Co., No. 12760, U. S. Circuit Court, Eastern District of Louisiana, nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Certificate of Release of Mortgage Recorded Against Gustave Sylvan Dorwin.

Offered by Defendant and Filed Nov. 12th, 1901, in Case of Heirs of Gonsoulin vs. The Gulf Company, No. 12760, U. S. Circuit Court, Eastern District of Louisiana.

Made Part of Bill of Exception No. 1, Nov. 13th, 1901.

United States of America,
State of Louisiana,
City of New Orleans,
Parish of Orleans.

Be it known, that on this sixteenth day of the month of January, in the year of our Lord one thousand nine hundred and one (1901), and of the Independence of the United States of America the one hundred and twenty-fifth:

I, Charles Theodore Soniat, a notary public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, do hereby certify that on the nineteenth (19) day of the month of July, in the year of our Lord one thousand eight hundred and ninety-eight (1898), the following described promissory notes were presented to me, notary, with signatures duly canceled and defaced, to-wit:

60 1. Four certain promissory notes, dated New Orleans, July 1st, 1898, drawn by Gustave S. Dorwin, to his own order and by himself endorsed, each for the sum of fifteen thou-

sand dollars ($15,000.00) payable in one, two, three and four years after their date, respectively, and bearing, respectively, Nos. one, two, three and four years, bearing interst at the rate of six per cent. (6%) per annum from date until paid; said notes with an act of sale executed before me, notary, on May 15th, being paraphed Ne Varietur by me, notary, for identification 1897, and with an act of mortgage executed before me, notary, on February 7th, 1898, in favor of Robert Sharkey Withers, against the hereinafter described property.

Which notes are annexed in the margin of said act of mortgage, passed before me, notary, on February 7th, 1898.

2. Four certain promissory notes, dated New Orleans, July 1st, 1898, drawn by Gustave S. Dorwin, to his own order and by himself endorsed, three for the sum of five thousand dollars ($5,000.00) each, payable, respectively, on January 1st, 1899, July 1st, 1899, and July 1st, 1900, bearing Nos. one, two and three, respectively, and one for the sum of thirty thousand dollars ($30,000.00), payable on July 1st, 1901, bearing No. four, and bearing interest at the rate of six per cent per annum from July 1st, 1898, and are paraphed Ne Varietur by me, notary, for identification with an act of sale dated May 17th, 1897, acknowledged before Hewes T. Gurley, notary public in this city, and with an act of mortgage passed before me, notary, on March 2nd, 1898, and are secured by vendor's privilege and special mortgage on the hereinafter described property.

Which notes are annexed in the margin of said mortgage passed before me, notary, on March 2nd, 1898.

The property herein above referred to, being described as follows, to-wit:

A certain tract of land, called the Belle Isle, situated, lying and being in the Parish of St. Mary, State of Louisiana. bounded on the west by Wax Bayou, upon which said island fronts, and on the south by the Atchafalaya Bay, and on the east by Doctor's Bayou; containing four hundred (400) acres high land, more or less, and twenty-four hundred (2400) acres sea marsh or pasture lands—in all twenty-eight hundred (2800) acres, more or less.

And I, the undersigned, do hereby further certify that on or about the said 19th July, 1898, I issued a certificate of the cancellation of the mortgages securing the notes above described.

Now, therefore, by reason of the payment and of the
61 cancellation of said notes, above described, I, the under-
signed notary, do hereby authorize and empower the recorder of mortgages in and for the Parish of St. Mary, State of Louisiana, to cancel, erase, release and annul entirely from the records of his office the following inscriptions, to-wit:

1. The inscription of the act of sale passed before me, notary, on May 15th, 1897, made in mortgage book 39, folio 652.
2. The inscription of the mortgage passed before me, notary, on February 7th, 1898, and,
3. The inscription of the act of mortgage passed before me, notary, on the 2nd day of March, 1898.

In faith whereof, I grant these presents, under my signature and the impress of my official seal, the day, month and year first above written.

[Seal] (Signed) CHAS. T. SONIAT,
Not. Pub.

[Canceled U. S. Int. Rev. 10c. Documentary Stamp]

Identified with bill of exceptions No. 1 in Heirs of Gonsoulin vs. Gulf Co., No. 12760, U. S. Circuit Court, Eastern District of Louisiana; nunc pro tunc as of November 13th, 1901.

(Signed) CHARLES PARLANGE, U. S. Judge.

Deed from Gustave Sylvan Dorwin to the Gulf Company.

Filed Nov. 12th, 1901.

Identified with Bill of Exception No. 1; nunc pro tunc as of November 13th, 1901.

THE HEIRS OF GONSOULIN
vs. No. 12760.
THE GULF COMPANY.

This indenture, made this thirty-first day of March, 1898, between Gustave Sylvan Dorwin, of the City, County and State of New York, party of the first part, and The Gulf Compahy, a corporation duly organized and existing under the laws of the State of New Jersey, party of the second part, herein appearing by William C. Rowland, president, and Archibald A. McGlashan, secretary, under authority of a resolution of said company of date March 17th, 1898, a certified copy of which is hereto annexed.

62 Witnesseth, that the said party of the first part, in consideration of one dollar ($1.00), lawful money of the United States, and other good and lawful consideration to him in hand paid by the party of the second part, the receipt of which is hereby acknowledged, does hereby sell, convey, transfer and deliver unto the said party of the second part, and to its successors and assigns forever, all the following described property, to-wit:

"A certain tract of land called Belle Isle, situate, lying and being in the Parish of St. Mary, in the State of Louisiana, bounded on the west by Wax bayou, upon which said island fronts, and the south by Atchafalaya bay, and on the east by Doctor's bayou, containing four hundred (400) acres, high land, more or less, and twenty-four hundred (2400) acres sea marsh or pasture lands, in all twenty-eight hundred (2800) acres, more or less," together with all mineral rights therein, being the same property acquired by the party of the first part from Robert Sharkey Withers by an act before Charles T. Soniat, notary public, on May 15th, 1897, and from Anthony Francis Lucas, by deed dated and acknowledged May 17th, 1897, together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part, its successors and assigns forever, subject nevertheless to two certain mortgages now constituting liens upon said premises, the first made by the party of the first part to Robert Sharkey Withers to secure the sum of sixty thousand dollars ($60,000), with interest, and the other made by the party of the first part to Anthony Francis Lucas to secure the sum of forty-five thousand dollars ($45,000), with interest, and the said party of the first part does hereby covenant with the said party of the second part as follows:

First. That he, Gustave Sylvan Dorwin, the party of the first part, is seized of the said premises in fee simple and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from encumbrances, except as above stated.

Fourth. That the party of the first part will execute or procure any further necessary assurance to the title to said premises.

63 In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

GUSTAVE SYLVAN DORWIN,
THE GULF COMPANY,
By WILLIAM C. ROWLAND,
President.

Attest: ARCHIBALD A. McGLASHAN, Secretary.

In the presence of:
SAMUEL D. MILLER,
ARTHUR E. WALRADT.

State of New York,
County of New York, ss.

Be it known and remembered, that on this first day of April, in the year of our Lord one thousand eight hundred and ninety-eight, personally came and appeared before me, Alfred Mackey, Commissioner of the State of Louisiana in and for the State of New York, and in the presence of Messrs. Samuel D. Miller and Arthur E. Walradt, competent witnesses, Gustave Sylvan Dorwin, to me personally known as the individual described in and who executed the foregoing conveyance, and acknowledged to me, commissioner, in the presence of the said witnesses, that he executed the said conveyance as his act and deed.

In testimony whereof, I have caused the said parties and the said witnesses to sign this acknowledgment together with me, commissioner, on the day and date above written.

(Signed) GUSTAVE SYLVAN DORWIN,
" WILLIAM C. ROWLAND, President,
" ARCHIBALD A. McGLASHAN, Secretary.

Witnesses:

(Signed) SAMUEL D. MILLER,
" ARTHUR E. WALRADT,
" ALFRED MACKAY,
[Seal] Commissioner for State of Louisiana in New York.

[Stamped:]
Office and postoffice address, The Mutual Life Building, Nassau, Cedar & Liberty Streets, New York City, New York.

Whereas, this company has heretofore agreed to purchase from G. S. Dorwin the property known as "Belle Isle," situate in the Parish of St. Mary, and State of Louisiana, for the consideration heretofore agreed upon provided that it be certified by responsible Louisiana counsel that the said Dorwin is the owner in fee of the said property, and

Whereas, Messrs. Farrar, Jonas, Kruttschnitt & Gurley, counsellors at law, of New Orleans, have certified that
64 the said Dorwin is the owner in fee of the said property, subject only to mortgage incumbrances not exceeding one hundred and twenty-four thousand dollars ($124,000), and have approved the form of the proposed deed from the said Dorwin to this company, of the said property.

Now, therefore, be it resolved, that the president and secretary of this company be, and they hereby are, authorized to join with the said Dorwin in the execution of the said deed, and to execute the same in the name of, and on behalf of, this company, and in the same behalf to accept a delivery of said deed from said Dorwin.

I, Archibald A. McGlashan, secretary of the Gulf Company, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by The Gulf Company by unanimous vote of all of the director[s] held at the temporary office of the company in the Mutual Life Building, No. 32 Nassau street, in the City of New York, on the 17th day of March, 1898.

In witness whereof, I have hereunto affixed my hand and the seal of said The Gulf Company, on this 31st day of March, 1898.

(Signed) ARCHIBALD A. McGLASHAN,
[Seal] Secretary of the Gulf Company.

Clerk's Office,
Parish of St. Mary, La.

I, Jno. R. Parkerson, Clerk and Ex-Officio Recorder, in and for the Parish of St. Mary, Louisiana, do hereby certify that the foregoing has been duly recorded in book "11" of conveyances, entry No. 24180, page 225, of my office, inscribed therein on the 12th day of April, 1898.

In evidence whereof witness my hand and official seal this 19th day of April, A. D. 1898.

[Seal] (Signed) JNO. R. PARKERSON,
Clerk and Ex-officio Recorder, Parish of St. Mary.

(Indorsed:) Identified with Bill of Exception No. 1, in Heirs of Gonsoulin vs. Gulf Company, No. 12,760, U. S. Circuit Court, Eastern District of Louisiana; nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

65 Confirmation of Commissioners.

Offered by Defendant. Filed Nov. 12, 1901.

Identified with Bill of Exception No. 1. Nunc Pro Nunc, as of November 13th, 1901.

THE HEIRS OF GONSOULIN,
vs. No. 12,760.
THE GULF COMPANY.

Copy.

B. No. 1169. Deputy Register's No. 195 Attakapas.

Walter Brashear, of the State of Kentucky, is confirmed in his claim to a tract of land containing three hundred and seventy-one superficial arpens, equal to three hundred and thir-

teen 96-100 American acres, founded on an order of survey in favor of Samuel Watson, dated the 30th of July, 1802, and signed by Moralis, acting Intendant of the Province of Louisiana, with the sanction of Salcedo, then Governor of the province aforesaid, and surveyed by Carlos Trudeau the 8th of November, 1802, with proof of settlement on and previous to the 20th of December, 1803, and regularly conveyed to the present claimant, situate in the County of Attakapas, on the island known by the name of Belle Isle, in the Bay of Chaffoliere, and to have.....shall be to.....to be..... is.....or so much thereof as is not rightfully claimed by any other person.....22nd,.....July..... eleven.....thirty-six.....

(Signed) WM. GARRARD,
LEVIN WAILES,
GIDEON FITZ,
Commissioners.

Attest: JOHN THOMPSON, Clerk of the Board.

U. S. Land Office,
New Orleans, Louisiana, January 15th, 1901.

We, the undersigned, do hereby certify that the above and foregoing is a true and correct copy of Book B, of Commissioners' Certificate on file in this office.

(Signed) WALTER L. COHEY, Register.
(Signed) CHARLES P. JOHNSON, Receiver.

(Indorsed:) Identified with bill of exception No. 1.
66 In Heirs of Gonsoulin vs. Gulf Co. No. 12,760. U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Printed Report of Land Commissioners on Claim—To Be Found in American State Papers, Volume 3.

Minutes of Proceedings of Board of Commissioners Offered by Defendant.

Filed November 12, 1901.

Identified with Bill of Exceptions No. 1. Nunc Pro Tunc, as of November 13th, 1901.

United States Circuit Court, Eastern District of Louisiana.

HEIRS OF GONSOULIN
VS. **No. 12,760.**
THE GULF COMPANY.

Minutes of the Proceedings of the Board of Commissioners, Appointed for the Purpose of Ascertaining and Adjusting the rights of Persons Claiming Lands in the Western District of the Territory of Orleans.

Monday, 22nd July, 1811.

The Board met according to adjournment.

Present: Wm. Garrard, Levin Wailes and Gideon Fitz, Esq'rs.

Walter Brashear, 571 arpens, order, survey and settlement in favor of Samuel Watson.

Oliver Ormsby, being first sworn in the claim of Samuel Watson, deposes and says that on the 27th of November, 1803, he, on behalf of the claimant, contracted in writing with a certain William Martin to make an establishment upon and improve the land claimed for the use and benefit of the claimant; that on that day in consequence of a previous verbal contract the said Martin with the deponent arrived upon the land claimed and the said Martin commenced improving thereof. That wilst the deponent remained upon the said land, which was
67 10 or 12 days, there was a cabbin built thereon and about 3 acres of land cleared and vegetables sown and planted thereon; that the said Martin continued to reside thereon untill some time in the ensuing March when he sold the benefit of his contract to Creed West, who continued to reside thereon and cultivate the same for two or three succeeding years as the tenant of the claimant, and the said land has been occupied and cultivated every year since untill the last or the 20th of Decem-

ber, 1803, the claimant was over 21 years of age and resided within the Province of Louisiana; the claimant also says there was no appearance of any improvement having ever been made on the land prior to 27th November, 1803, except a few peach trees planted. OLIVER ORNSBY.

Taken before me in the County of Attakapas, the 26th of June, 1809. RD. COCKE.

William Briggs, being first sworn, in the claim of Samuel Watson, deposes and says, that some time in the month of January, in the year 1804, he was upon the land claimed, at which times, a man by the name of William Martin, with his family and another family was residing thereon, and he understood from the said Martin that he was residing there as the tenant of this claimant. That at the period above mentioned the said Martin had cleared about 12 or 15 acres and had a good cabbin built thereon. WM. BIGGS.

Taken before me in the County of Attakapas, the 26th of November, 1803. RD. COCKE.

Title confirmed, certificate B, No. 1,169 issued.

Thursday, 11th May, 1815.

The Board having decided on all the claims for land in the Western District of the late Territory of Orleans, now State of Louisiana, which were filed with the late Regiser of the Land Office, or his deputies, and laid before them for investigation, etc., by the present register.

Ordered that the Board of Commissioners appointed for the purpose of ascertaining and adjusting the titles and claims to land in the said Western District be now dissolved and they accordingly adjourned without a day.

(Signed) WM. GARRARD,
LEVIN WAILES,
GIDEON FITZ,
Commissioners.

By order of the Board. LLOYD POSEY, Clerk.

68 Office of Surveyor General, District of Louisiana.

I hereby certify the foregoing to be a correct extract from the original record of the minutes of the Board of Commissioners in the Western District of the Territory of Orleans on file in this office.

Witness my hand and seal of office at New Orleans, La., this 17th day of January, A. D. 1901.

[Seal] (Signed) JAMES LEWIS, Surveyor General La.

(Ten cent U. S. Documentary Stamp.)

(Indorsed:) Identified with bill of exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Copy of Report of Commissioners on Claim of Dautrieve Dubuclet, Et Als.

Offered by Defendant. Filed November 12, 1901.

Identified with Bill of Exceptions No. 1, in Heirs of Gonsoulin vs. The Gulf Company, No. 12,760, U. S. Circuit Court, Eastern District of Louisiana, nunc pro tunc as of November 13, 1901.

Land Office, Western District, State of Louisiana,
1st May, 1815.

To the Honorable Commissioner of the General Land Office in the Treasury Department United States:

The undersigned Commissioners appointed for the purpose of ascertaining the rights of persons to land within the district aforesaid have the honor to report in continuation the following list of claims to land within the County of Attakapas, classing the same agreeably to the order observed in their report made on the 16th day of October, 1812, on claims in the County of Concordia to which they beg leave to refer:

69 Claims to Land in the County of Attakapas.

Reported No.—33. Registers No.—.. By whom claimed—Dauterive Dubuclet & als. Original proprietor or Claimant—Dubuclet and others. Quantity Claimed—about 3300 arpents. Nature and date of the title or claim—orders of survey 33. Class—B. Belle Isle.

Remarks on the Foregoing List of Land Claims With Reference to the Reported Nos.

* * * * * * * * * * * * * * * * * *

No. 33 Dauterive DuBuclet Benoist de St. Clair and Francois Gonsoulin claim an island called Bell Isle. The notice of

this claim is accompanied by the Petition of the Claimants dated 20 March, 1783, setting forth that there is an island of woods on the Bay of Chafalaya about four leagues west of the mouth of Chafalaya and about thirty-two leagues from Attakapas (supposed the church) which island is surrounded by trembling prairie or marsh only fit for raising hogs, which the petitioners propose to engage in for the purpose of supplying the City of New Orleans with the article of pork representing the island to contain about one league in front by the ordinary depth. Subjoined to the petition and of the same date to the certificate of the Commandant Cher DeClouet stating that what is exposed by the peitioners is true and that the island petitioned for is only fit for the purpose for which it is solicited. The order of survey by Governor Miro, dated at New Orleans, 2 May, 1783, directing the Surveyor General to put the parties in possession of the island solicited confining them to the front and depth mentioned in the petition and without expressing any conditions of settlement &c. is subjoined to the Commandant's certificate. No proof of occupancy or other evidence of title except the above has been offered in support of the claim. This claim in the opinion of the Commissioners would have been valid under the usage of the Spanish government and therefore ought to be confirmed.

Office of Surveyor General, District of Louisiana.

I hereby certify the above to be a correct extract from the record book entitled "Commissioner's Reports No. 7," being a transcript of the reports of the Commissioners Western District of Louisiana, on file in this office.

70 Witness my hand and seal of office at New Orleans, this 17th day of January, A. D. 1901.

[Seal] (Signed) JAMES LEWIS,
Surveyor General, La.

(1 cancelled U. S. Int. Rev.)
(10c Documentary Stamp.)

(Indorsed:) Identified with bill of exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc as of November 13, 1901. (Signed) Charles Parlange, U. S. Judge.

THE GENERAL ACT OF CONGRESS.

Approved April 29th, 1816.

Note: To be read from the printed bound volume.

Certified copy of Patent issued August 21, 1878, to Dauterieve Dubuclet, Benoist de St. Clair, and Francois Gonsoulin; certified by Binger Hermann, Commissioner of General Land Office, Washington, D. C., January 25, 1901.

Filed November 12, 1901, in Heirs of Gonsoulin vs. Gulf Company, No. 12,760, U. S. Circuit Court, Eastern District of La.
W. H. L.
A. D. S.
"G"

(4—205.)

Department of Interior,
General Land Office,
Washington, D. C., January 25, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent issued August 21, 1878, to Dautrieve Dubuclet, Benoist de St. Clair, and Francois Gonsoulin, for certain land in Louisiana, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed
71 my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal] (Signed) BINGER HERMANN,
Commissioner of General Land Office.

(1 cancelled U. S. Int. Rev. 10c. Documentary Stamp.)

(4—446.)

THE UNITED STATES OF AMERICA.

To all to Whom These Presents Shall Come, Greeting:

Whereas, there has been deposited in the general land office of the United States, a patent certificate numbered ninety-four of the Register of the Land Office at New Orleans, in the State of Louisiana, whereby it appears by the Act of Congress approved on the twenty-ninth day of April, A. D. one thousand

eight hundred and sixteen, entitled "An Act for the confirmation of certain claims to land in the Western District of the State of Louisiana and in the Territory of Missouri," the claim of Dautrieve Dubuclet Benoist de St. Clair and Francois Gonsoulin entered as B. No. 33 in the report, dated the first day of May, A. D. one thousand eight hundred and fifteen of the Commissioners for the Western District of the State of Louisiana formerly Territory of Orleans has been confirmed.

And whereas, said claim has been regularly surveyed and designated as section twenty-eight in township seventeen south, of range ten east and section nineteen in township seventeen south of range eleven east, in the late Southwestern District in the State of Louisiana, containing two thousand eight hundred and twenty-six acres and twenty-eight hundredths of an acre as appears by a plat of survey made on file in the general land office, duly approved by O. H. Brewster, Surveyor General of the State of Louisiana, on the twenty-second day of April, A. D. one thousand eight hundred and seventy-eight, which said plat and description are in the words and figures as follows, to-wit:

(N. B. The plat representing the survey of tract of land made in conformity with Report No. 33 issued by the Commissioners of Western District Louisiana, in favor of Dautrieve Dubuclet, Benoist de St. Clair and Francois Gonsoulin, appearing here in the original, is to be transmitted in the original along with this transcript, as per stipulation copied at page 174 hereof; and is omitted herefrom.)

72 " The above plat represents the survey of a tract of " land made in conformity with Report No. 33 issued by " the Commissioners of Western District Louisiana, in favor " of Dautrieve Dubuclet, Benoist De St. Clair and Francois " Gonsoulin which claim is embraced in Commissioners' re- " port dated May 1st, 1815, and was confirmed by Act of Con- " gress approved the 29th day of April, 1816, entitled 'An Act " for the confirmation of certain claims to land in the Western " District of the State of Louisiana and in the Territory of " Missouri,' the following being a description of the survey " taken from the approved field notes of A. F. Rightor and An- " drew McCollam, Deputy Surveyors:

" Beginning at (A) on Wax Bayou, thence on upper line of " claim S. 48°. E. 21.00 chs. a bayou 3.00 chs. wide, 146.36 " chs. to (B) S. E. corner of this claim a mound and stake, " thence on back line S. 42 W. 166.12 chs. to a bayou 2.50 " chs. wide 199.62 chs. to Lake Belle Isle 222.92 chs. to (C) " on the township line 32.35 chs. from the corner to sections " 30 and 31—242.42 chs. to (D) S. W. corner of this claim,

" thence on lower line of this claim N. 48 W. 69.06 chs. to " a bayou 1.00 chs. wide 116.36 chs. to (E) lower front " corner of this claim, thence traverse of Wax Bayou in front " of this claim N. 87 E. 19.50 chs. N. 41 1-4 E. 4.00 chs. " a small bayou 160 chs. wide 22.00 chs. East 19.00 chs. N. " 20 E. 15.00 chs. N. 45 W. 24.60 chs. N. 67 E. 29.50 chs. " a bayou 4.00 chs. wide, 38.00 chs. N. 40 W. 49.00 chs. " N. 50 E. 30.00 chs. S. 60 E. 20.00 chs. North 18.33 chs. " N. 61 1-2 E. 15.35 chs. to F. on east boundary of T. 17 S. R. " 10 E., thence N. 61 1-2 E. 18.00 chs. a bayou 1.20 chs. " wide, 31.00 chs. East 33.00 chs. North 25.00 chs. N. 50 W. " 8.50 chs. at bayou 1.30 chs. wide 29.00 chs. N. 20 E. 6.00 " chs. to upper line of claim and (A), the place of beginning. Being Sec. No. $\frac{28}{19}$ in township No. $\frac{17 \text{ south}}{17 \text{ south}}$ of range No. $\frac{10 \text{ E.}}{11 \text{ E.}}$ " Southwestern District, Louisiana, containing 2.826 acres " and 28 hundredths of an acre.

" Surveyor General's Office, New Orleans, La., April 22d, 1878.
" Examined and approved.

" O. H. BREWSTER,
" Surveyor General La."

Now know ye, that the United States of America in consideration of the premises and in conformity with the said
73 Act of the twenty-ninth day of April, A. D. one thousand eight hundred and sixteen, have given and granted and by these presents do give and grant unto the said Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin or to their legal representatives or to their heirs and assigns the tracts of land embraced and described in the foregoing survey.

To have and to hold the said tracts of land with the appurtenances unto the said Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin and to their heirs and assigns forever.

In testimony whereof, I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the City of Washington, this twentfirst day of August, in the year of Our Lord, one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and third.

[L. S.] By the President: R. B. HAYES.

By WM. H. COOK, Secretary.
S. W. CLARK, Recorder of the General Land Office.

(Indorsed:) Identified with bill of exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co. No. 12,760, U. S. Circuit Court, Eastern District of Louisiana.

Copy of Commissioner's Report No. 33, Certified by James Lewis, Surveyor General of Louisiana, Dated January 17, A. D. 1901.

Filed November 12, 1901, and identified with Bill of Exception No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12760, U. S. Circuit Court, Eastern District of Louisiana; nunc pro tunc as of November 13, 1901.

(N. B. The plat representing survey of a tract of land made in conformity with report No. 33, issued by Comm'rs of Western District, La., in favor of Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin, appearing here in the original, will be shown by the original to be transmitted along with this transcript, as per stipulation copied at page 174 of this transcript, said plat being omitted herefrom.)

Variation of the needle 9° 00′ east.

74 Scale 40 chains per inch.

The above plat represents the survey of a tract of land, made in conformity with report No. 33, issued by the Commissioners of Western District, Louisiana, in favor of Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin, which claim is embraced in commissioner's report dated May 1st, 1815, and was confirmed by Act of Congress approved the 29th day of April, 1816, entitled "An Act for the Confirmation of Certain Claims to Land in the Western District of the State of Louisiana and in the Territory of Missouri," the following being a description of the survey taken from the approved field notes of A. F. Rightor and Andrew McCollam, deputy surveyors.

Beginning at (A) on Wax bayou, thence on upper line of claim, S. 48° E. 21.00 chs. a bayou 3.00 chs. wide, 146.36 chs. to (B) S. E. corner of this claim a mound and stake. Thence on back line S. 42 W. 166.12 chs. to a bayou 2.50 chs. wide, 199.62 chs. to Lake Belle Isle, 222.92 chs. to (C) on the township line, 32.35 chs. from the corner to secs. 30 and 31, 242.42 chs. to (D) S. W. corner of this claim, thence on lower line of this claim N. 48 W. 69.06 chs. to a bayou 1.00 ch. wide, 116.36 chs. to (E) lower front corner of this claim, thence traverse of Wax bayou in front of this claim N. 87 E. 19.50 chs. N. 41 1-4 E. 4.00 chs. a small bayou 1.60 chs. wide, 22.00 chs. east 19.00 chs. N. 20 E. 15.00 chs. N. 45 W. 24.60 chs. N. 67 E. 29.50 chs. a bayou 4.00 chs. wide—38.00 chs. N. 40 W. 49.00 chs. N. 50 E. 30.00 chs. S.

60. E. 20.00 chs. north 18.33 chs. N. 61 1-2 E. 18.00 chs. a bayou 1.20 chs. wide 31.00 chs. East 33.00 chs. North 25.00 chs. N. 50 W. 8.50 chs. a bayou 1.30 ch. wide 29.00 chs. N. 20 E. 6.00 chs. to upper line of claim and (A) the place of beginning. Being Sec. No. $\frac{28}{19}$ in township No. $\frac{17 \text{ south}}{17 \text{ south}}$ of range No. $\frac{10 \text{ E.}}{11 \text{ E.}}$ Southwestern District Louisiana, containing 2826 acres and 28-hundredths of an acre.

Surveyor General's Office, New Orleans, La., April 22nd, 1878. Examined and approved:

(Signed) O. H. BREWSTER,
Surveyor General, La.

[1 U. S. Int. Rev. 10c. Documentary canceled stamp]

Office of the Surveyor General,

District of Louisiana.

I hereby certify the above and indorsement to be a correct copy of the original on file in this office.

75 Witness my hand and seal of office, at New Orleans, this 17th day of January, A. D. 1901.

[Seal] (Signed) JAMES LEWIS,
Surveyor General, La.

(Indorsement:) Original. Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin. Comms. Rept. No. 33, (Sec. 28, T. 17, S. R. 10 E.) (Sec. 19, T. 17, S. R. 11 E.), Southwestern District, Louisiana, 2,826.28 acres. Duplicate handed to Mr. Thos. Tully, April 26-78.

(Indorsed:) Identified with Bill of Exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12760, U. S. Circuit Court, Eastern District of Louisiana; nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Record in Case of Heirs of Gonsoulin Et Al. vs. Walter Brashear, No. 355, District Court of St. Mary, Louisiana.

Offered by Defendant in Case of Heirs of Gonsoulin vs. The Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. And filed November 12th, 1901.

Identified with Bill of Exceptions No. 1, nunc pro tunc as of November 13th, 1901.

Petition.

HEIRS OF GONSOULIN ET ALS.,
VS. No. 355.
WALTER BRASHEAR.

To the Honorable Seth Lewis, Judge of the District Court of St. Mary:

The petition of Marie Celeste DeLaGauterai, widow of Francois Gonsoulin, deceased, in her own right and as tutrix of her minor children, Ursin Gonsoulin and Francois Valcons Gonsoulin, all of the Parish of St. Martin, and also Joseph Antoine Gonsoulin, Jean Baptiste Gonsoulin, Pierre Harpin Gonsoulin, Claire St. Clair Gonsoulin, Francois D'Lmancon Gon-
76 soulin, John Baptiste Luzincoin Gonsoulin, Marie Arsae Gonsoulin, Marie Petite Gonsoulin, authorized by her husband, Charles Bienvenue and her said husband, Marie Ann Poupons Gonsoulin, authorized by her husband Sebastian Castergo and her said husband, and of Margrite Adilaide Gonsoulin, widow of George Greig, deceased, all of St. Martin and of Marie Louise Celeste Gonsoulin, authorized by her husband Francois Boutte, fils and her said husband of the Parish of St. Mary, all heirs and representatives of the said Francois Gonsoulin, deceased, and also of St. Claire Benoit in his own right as one of the heirs and representatives of Benoit De St. Claire, deceased, represent that upon the "Oath March, 1783, Dautrieve Du Buclet, Benoit De St. Claire and Francois Gonsoulin (all whom are now decease) petitioned the proper authority of the province of Louisiana to grant them a certain island called "Belle Isle" of about one league in front from northeast or southwest, with ordinary depth, situated about four leagues to the west of the mouth of the Chafalia and thirty-two leagues from Attakapas, and surrounded by bayous and tumbling prairie (marsh) and which was accorded to them as will appear by the title and order of survey of the governor, dated 2nd May, 1783, and which claim was inregistered [registered] in the land office of Opelousas and has been confirmed by the government of the United States, and your petitioners' heirs and representatives to the said Francois Gonsoulin, deceased, and St. Claire Benoit as heir to the said Benoit De St. Claire, deceased, present that they are the legal owners and proprietors of the said tract of land as follows, that is to say that your petitioners' heirs of said Gonsoulin, deceased, are entitled to their deceased father's portion of said land, and that your petitioner's widow of said Gonsoulin is entitled in her own right to the one half of the said

deceased Gonsoulin's portion the same being property acquired during marriage, and that said St. Claire Benoit as one of the heirs of his deceased Father Benoit De St. Claire (who left but two heirs, your petitioner and his brother Benoit De St. Claire fils), is entitled to half of his said deceased father's portion, and that your petitioner's heirs and children of deceased Gonsoulin are the owners of all the right and title of the deceased Dautrieve Dubuclet, as will appear by a deed from Marie Martha Bienvenue, widow of said deceased Dubuclet, and from Joseph Dubuclet, the only heirs of the said deceased Dubuclet made by authentic act upon the 27th day of April, 1822, and further that one of your petitioners, Claire St. Claire Gonsoulin is the
77 owner of the part or portion of De St. Claire, the other heir of the deceased S. Claire aforesaid, as will by act dated upon the 27th day of April, 1822, and your petitioners as aforesaid represent that notwithstanding their right and title to the said land, a certain Walter Brashear of the Parish of St. Mary, has entered upon the said tract of land and taken possession of the same, alleging and publicly declaring that the same in [is] his property and that your petitioners have no right to the same, and further that he, the said Walter Brashear, has committed great damages upon the said property and keeps possession of the same against the claim of your petitioners by force and arms and does other injuries to your petitioners in the premises to the value of twenty thousand dollars. Your petitioners therefore pray that the said Walter Brashear may be cited to appear according to law, and that your Honor do decree, that the titles of your petitioners to the said land are just and legal and that the said Walter Brashear has no right or title to the same against your petitioners, and that he be perpetually enjoined from setting up any title to the same, and further that the sheriff of the Parish of St. Mary do put your petitioners into peaceable possession of the said land together with all the buildings and improvements thereon, and that said Walter Brashear be compelled to pay your petitioners the aforesaid sum of twenty thousand dollars as damages and the costs of this suit, and as in duty bound, etc. And further your petitioners for all other and further relief that they may be entitled to in law, equity and good conscience.

(Signed) BRENT & FENNESEY,
For Petitioners.

Order of Court.

October Term, 1822.

HEIRS of GONSOULIN & AL.,
vs.
WALTER BRASHEAR.

In this case on motion of defendants by his attorney John Brownson, Esq., it is ordered that this cause be removed to the District Court of the United States for the Louisiana District conformably to the prayer of the defendant's petition on the defendants complying with the requisits [requisites] prescribed by the Acts of the Congress of the United States in such case made and provided.

78 Order of Court.

April Term, 1824.

HEIRS OF GONSOULIN & AL.,
vs.
WALTER BRASHEAR.

This cause having been removed to the Federal Court on motion of Ed. Simon, Esq., attorney for plaintiffs; it is ordered that this cause be reinstated on the Docket of this Court. Continued and ordered that a survey be made of the premises in dispute by James L. Johnson returnable to this Court for the next term of this Court.

Order of Court.

October Term.

HEIRS OF GONSOULIN & AL.,
vs.
WALTER BRASHEAR.

District Court,
Parish of St. Mary.

The defendants for answer denies and singular the allegations set forth in the plaintiff's petition and further he says that he says that he has good right and title to the premises demanded in the petition under an order of survey made on

the 30th of July, 1802, in favor of Samuel Watson followed by settlement and possession which title has been confirmed by the United States as will appear on reference to the commissioner's certificate subjoined to this answer.

The defendant further says that he claims the premises by possession thereof with a just title and good faith by himself and those under whom he holds from the said Samuel Watson commencing from the 30th of July, 1802, and continued up to the present time and he pleads the prescription of ten and twenty years.

Wherefore the defendant preys [prays] to be hence demissed with his costs. Should the aforesaid pleas be overruled, then the defendant says that he took possession of the premises in good faith, "claimed by the plaintiffs," and has built and improved thereon to the value of thirty thou-
79 sand dollars, and that the said premises are improved in value to the amount of thirty thousand dollars and would be worth that sum to the plaintiffs more than if the said buildings and improvements had not been made.

Wherefore the defendant prays that in case the premises should be recovered of by him by the plaintiffs, that then they should be condemned to pay the said sum of thirty thousand dollars and that he be permitted to retain the possession of the said premises until the said sum be paid.

The defendant also prays for such other and further relief as equity and justice demand and as in duty bound, etc.

(Signed) JOHN BROWNSON,
Attorney for Defendant.

Order of Court.

HEIRS OF GONSOULIN,
vs.
WALTER BRASHEAR.

By consent of parties it is ordered that all the parole evidence excepting such as relates to the proof of the execution of the written instrument offered in evidence shall be taken out of Court before some magistrate and that the trial of this cause be adjourned to the next term of the District Court in and for the Parish of St. Martin, when the written evidence may be offered but no parole, excepting such as shall be taken as before directed, and as such as to prove the execution of written documents, and that the judgment shall be rendered at the said Parish of St. Martin during the next term of said Court and sent down and entered as a judgment of this present term of this Court.

(Signed) SETH LEWIS, District Judge.

Judgment.

HEIRS OF GONSOULIN & OTHERS,
VS.
WALTER BRASHEAR.

District Court Parish of St. Mary.

The Court having heard the allegations of the parties and the evidence adduced by them respectively, and being of
80 opinion after argument, that the law and evidence are in favor of the defendant, it is therefore ordered, adjudged and decreed the defendant be forever quieted in the possession of the land and property in dispute against all clams and pretensions in favor of the plaintiff according to the limits as fixed by the survey of James L. Johnson made and returned by order of this Court and that the plaintiffs do pay the costs of this suit to be taxed.

It is also further ordered, adjudged and decreed by consent of parties expressly given in open court that this judgment be sent to the Clerk's office of the District Court, in and for the Parish of St. Mary, to remain of record and be reputed and considered as a judgment of the district last aforesaid, and all the legal effects and consequences, and be considered as referring the same rights and privileges upon either parties to this suit as if the same had been pronounced and decided at the last term of the said District Court, in and for the Parish of St. Mary.

Done in open court, at St. Martinsville, during the session of the District Court, in and for the Parish of St. Martin, this 26th day of April, 1825

(Signed) SETH LEWIS, District Judge.

Clerk's Office,
Parish of St. Mary, La.

I, John R. Parkerson, Clerk and Ex-officio Recorder, in and of the Parish of St. Mary, Louisiana, do hereby certify that the foregoing is a true and correct copy of the proceedings had in the above numbered and entitled cause as taken from the books of suit records in my said Recorder's office, on page 11, et seq., the same being suit No. 355 of the docket of the District Court of the Parish of St. Mary. I further certify that the original documents on file of said suit after careful search can not be found.

In evidence whereof witness my hand and official seal this 19th day of November, 1898.

[Sealed] (Signed) JOHN R. PARKERSON,
Clerk and Ex-officio Recorder, Parish of St. Mary.

(5 cancelled U. S. Rev. 2c documentary stamps.)

(Indorsed:) Identified with bill of exception No. 1. In the Heirs of Gonsoulin vs. Gulf Co. No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1901.

(Signed) CHARLES PARLANGE, U. S. Judge.

81 CERTIFIED COPY OF RECORD OF CASE OF HEIRS OF GONSOULIN AND OTHERS VS. WALTER BRASHEAR, DISTRICT COURT, PARISH OF ST. MARY, DATED JAN. 4, 1823.

Filed Nov. 12, 1901.

Identified with Bill of Exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court Eastern District of Louisiana. Nunc pro tunc, as of November 13, 1901.

Dist. Court, 5th District, Parish of St. Mary.

HEIRS OF GONSOULIN, ET AL.,
vs.
WALTER BRASHEAR.

Be it remembered that on the first day of May in the year our Lord, one thousand, eight hundred and twenty-two, into the District Court, 5th District of Louisiana, Parish of St. Mary, came the Heirs of Gonsoulin and others, by their attorney, William L. Brent, Esquire, and filed the following petition, to-wit:

To the Honorable Seth Lewis, Judge of the District Court of St. Mary:

The petition of Marie Celeste De La Gonterai, widow of Francois Gonsoulin, deceased, in her own right and as tutrix of her minor children, Ursin Gonsoulin and Francois Gonsoulin, Valcour Gonsoulin, all of the Parish of St. Martin, and also of Joseph Antoine Gonsoulin, Jean Baptiste Gonsoulin, Pierre Harpin Gonsoulin, Clare St. Clair Gonsoulin, Francois D'Eman-

cour Gonsoulin, John Baptiste Luzencour Gonsoulin, Marie Anne Gonsoulin, Marie Pepit Gonsoulin, authorized by her husband Charles Bienvenu and her said husband, Marie Aine Poupone Gonsoulin, authorized by her husband, Sebastian Casteyo, and her said husband, and of Margarite Adelaide Gonsoulin, widow of George Greig, dec'd., all of St. Martin, and of Marie Louise Celeste Gonsoulin, authorized by her husband, Francois Boutte fils, and her said husband, of the Parish of St. Mary; all heirs, and representatives of the said Francois Gonsoulin, deceased; and also of St. Claire Benoit in his own right as one of the heirs and representatives of Benoit De St. Claire, de-
82 ceased—represent that upon the 20th March, 1783—Dautrive Dubuclet, Benoit De St. Claire and Francois Gonsoulin, all of whom are now dead, petitioned the proper authority of the then Province of Louisiana to grant them a certain island, called "Belle Isle," of about one league in front from North East, on Southwest with ordinary depth, situated about four leagues to west of the mouth of Atchafalia and thirty-two leagues from Attakapas, and surrounded by bayou and Trembling prairie—(marsh), and which was accorded to them, as will appear by the title and order of survey of the then Governor, dated 2d May, 1783, and which claim was enregistered in the Land Office of Opelousas and has been confirmed by the Government of the United States, and your petitioners, heirs and representatives to the said Francois Gonsoulin deceased, and St. Claire Benoit, as heir to the said Benoit De St. Claire, deceased, represent that they are the legal owners and proprietors of the said tract of land, as follows, that is to say: that your petitioners, heirs of said Gonsoulin, deceased, are entitled to their deceased father's portion of said land, and your petitioner, said widow of said Gonsoulin, is entitled in her own right to the one-half of said deceased Gonsoulin's portion, the same being property acquired during marriage, and that said St. Claire Benoit, as one of the heirs of his deceased father, Benoit De St. Clair—(who left but two heirs, your petitioner, and his brother, Benoit De St. Claire, fils), is entitled to the one-half of his said deceased father's portion, and further, that your petitioners, heirs and children of deceased Gonsoulin, are the owners of all the right and title of the deceased Dautrive Dubuclet, as will appear by a deed from Marie Martha Bienvenu, widow of said deceased Dubuclet, and from Joseph Dubuclet, the only heir of the said deceased Dubuclet, made by authentic act upon the 27th day of April, 1822—and further that one of your petitioners, Claire St. Clair Gonsoulin, is the owner of the part or portion of Benoit De St. Claire, the other heir of the deceased St. Claire aforesaid, as will appear by act dated upon the 27th day of April, 1822.

And your petitioner as aforesaid, represents that notwithstanding their right and title to the said land, a certain Walter Brashear, of the Parish of St. Mary, has entered upon the said tract of land and taken possession of the same, alleging and publishing and declaring that the same is his property and that your petitioners have no right to the same, and further that the said Walter Brashear has committed great damages upon said property and keeps possession of the same against the claim of your petitioners by force and arms and does
83 other injuries to your petitioners in the premises to the value of twenty thousand dollars.

Your petitioners therefore pray that the said Walter Brashear may be cited to appear according to law and that your Honor do decree that the titles of your petitioners to the said land are just and legal and the said Walter Brashear has no right or title to the same as against your petitioners and that he be perpetually enjoined from setting up any title to the same, and further that the Sheriff of the Parish of St. Mary do put your petitioners into peaceable possession of the said land together with all the improvements, buildings, *etc.*, thereon, and that said Walter Brashear be compelled to pay your petitioners the aforesaid sum of twenty thousand dollars as damages and the costs of this suit, and as in duty bound, *etc.*, and your petitioners further pray for all other and further relief that they may be entitled to in law, equity and good conscience.

(Signed) BRENT & FENNESSY, for Petitioners.

Filed 1st day of May, A. D. 1822.

Test: (Signed) J. BRASHEAR, Clk.

October Term, 1822.

October Term 1822.

To the Honorable Seth Lewis, Judge of the District Court, 5th District, State of Louisiana:

The petition of Walter Brashear, a citizen of the State of Kentucky, sheweth that a suit has been instituted in your Honorable Court in favor of the Heirs of Gonsoulin and others inhabitants of the said State of Louisiana, Parish of St. Martin, against your petitioner, wherein they claim a tract of land of the value of three thousand dollars and upwards and twenty thousand dollars damages; that your petitioner is a citizen of the State of Kentucky wishes to remove the said suit from this Honorable Court to the District Court of the United States, for the Louisiana District, in conformity with the Act of Congress in such cases made and provided.

Your petitioner being willing to comply with the requisites of the law—

And as in duty bound will ever pray.

(Signed) JOHN BROWNSON, Atty. for Def't.

84 Filed, 23 day of October, 1822.

Test: (Signed) J. BRASHEAR, Clk.

And now, to-wit: this 23rd day of October, 1822, comes Walter Brashear, by his attorney, John Brownson, and files this his appearance to the suit instituted against him by the Heirs of Gonsoulin and others, in this Honorable Court, in and for the Parish of St. Mary, 5th Judicial District, State of Louisiana, in order that he, the said Walter Brashear, may avail himself as a citizen of the State of Kentucky of the right to remove this suit aforesaid from this Honorable Court into the District Court of United States for the Louisiana District, in conformity with the Act of Congress in such case made and provided.

(Signed) JOHN BROWNSON, Atty. for Def't.

Filed, 23d day of October, A. D. 1822.

Test. (Signed) J. BRASHEAR, Clk.

Thomas Wilcoxon, being duly sworn, doth depose and say that he knows the tract of land called the Belle Isle, in the Parish of St. Mary, which is the same tract of land claimed by the Heirs of Gonsoulin and others from Doctor Walter Brashear—that the said tract of land, in the opinion of this deponent, is worth three thousand dollars and upwards and would sell for that sum at any time.

(Signed) THOS. WILCOXON.

Sworn to and subscribed before me in open court, this 23 day of October, 1822.

Test: (Signed) J. BRASHEAR, Clk.

Filed 23rd October, A. D. 1822.

Test: (Signed) J. BRASHEAR, Clk.

Basil Crow, being duly sworn, doth depose and say that he knows the tract of land called the Belle Isle, in the Parish of St. Mary, which is the same tract of land claimed by the Heirs of Gonsoulin and others from Doctor Walter Brashear; that the said tract of land, in the opinion of this deponent, is worth three thousand dollars and upwards and would sell for that sum at any time. (Signed) BASIL CROW.

85 Sworn to and subscribed before me at my office, in the Parish of St. Mary, this ——— day of October, 1822.
(Signed) JAMES L. JOHNSON,
Justice of the Peace, Parish of St. Mary.

Filed 23d October, A. D. 1822.
Test: (Signed) J. BRASHEAR, Clk.

District Court of St. Mary.

October Term, 1822.

HEIRS OF GONSOULIN AND OTHERS.
vs.
W. BRASHEAR.

The petitioners in the original petition in this case come into Court and deny all the facts stated in the petition of the defendant for a removal of this cause, and state that he is not a citizen of Kentucky, but that he is an inhabitant and citizen of the Parish of St. Mary, in the State of Louisiana; that he has established his permanent residence in said parish and was a citizen thereof when said suit was commenced as well as at the time of said application for removal, and they pray that said application may not be granted.
And as in duty bound, etc.
(Signed) BRENT & FENNESSY,
For Heirs of Gonsoulin and Others.

Filed 24th day of October, 1822.
Test: (Signed) J. BRASHEAR, Clk.

Dist. Court St. Mary.

October Term, 1822.

HEIRS OF GONSOULIN AND OTHERS.
vs.
WALTER BRASHEAR.

In this cause the defendant moved to transfer the same to the District Court of the United States upon a petition
86 in which he states that he is a citizen of Kentucky, which was opposed by the petitioners, and the said motion was sustained by the Court, to which opinion of the Court the said petitioners by their attorney excepts and pray that this bill of exceptions may be signed, which is signed accordingly.
(Signed) S. LEWIS,
Judge of Fifth Dist. Ct.

Filed 24th day of October, A. D. 1822.
Test: (Signed) J. BRASHEAR, Clk.

Dist. Court St. Mary.

October Term, 1822.

HEIRS OF GONSOULIN AND OTHERS.
vs.
WALTER BRASHEAR.

Order: In this case, on motion of defendant, by his attorney, John Brownson, Esq., it is ordered that this cause be removed to the District Court of the United States, for the Louisiana District conformably to the prayer of the defendant's petition, on the defendants complying with the requisites prescribed by the Acts of the Congress of the United States in such cases made and provided.

(Signed) S. LEWIS, Dis't. Judge.
Test: (Signed) J. BRASHEAR, Clk.

Fifth Judicial District.

State of Louisiana,
Parish of St. Mary.

I, Jeremiah Brashear, Clerk of the District Court, holden in and for the Parish of Louisiana, do hereby certify the foregoing contained seven pages is a true transcript of the record and proceedings in the case of The Heirs of Gonsoulin and Others vs. Walter Brashear, on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed this seal of the said Court, at Franklin, in the Parish of St. Mary, this fourth day of January, in the year of our [Lord] one thousand, eight hundred and twenty-three.

Test: (Signed) J. BRASHEAR,
[Seal] Clk. D. C.

87 (Indorsed:) Identified with bill of exceptions No. 1. In Heirs of Gonsoulin vs. Gulf Co. No. 12,760. U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13th, 1901.

(Signed) CHARLES PARLANGE, U. S. Judge.

Opinion of the Supreme Court of Louisiana, found in 5th Volume of Martin's Reports, New Series, pp. 33 and 40.

Note: To be read from the printed volume.

Deposition of J. N. WOFFORD, taken on the 23rd day of May, A. D. 1901, before John B. Roberts, Notary Public, in the Parish of St. Mary, State of Louisiana, in the Town of Franklin under a commission issued out of the Clerk's office of the United States Circuit Court, for the Eastern District of Louisiana, in the City of New Orleans, May 21, 1901, in the cause entitled Heirs of Gonsoulin vs. The Gulf Company, No. 12,760, of the docket, on behalf of defendant.

Offered by defendant and read in evidence on the trial and identified with bill of exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc, as of November 13, 1901.

Interrogatory First. State your name, your residence and your age.

Answer. J. N. Wofford, Parish of St. Mary, Louisiana. I am eighty-three years old.

Interrogatory Second. How many years have you resided in the Parish of St. Mary, or in the parish adjacent thereto?

Answer. I have resided in the Parish of St. Mary since I was born.

Interrogatory Third. Were you acquainted with the late Dr. Walter Brashear? If yes, how many years did you know him, and how far back did your acquaintance with him begin? Do you know what year he died in?

Answer. I was acquainted with Doctor Walter Brashear; knew him since the year 1828. He died about the year 1860.

Interrogatory Fourth. Are you acquainted with a certain island situated in the Parish of St. Mary, known as Belle Isle Island, bounded by Wax Bayou, Doctor's Bayou and Atchafalaya Bay? If so, how long have you known of said property, and how far back does your memory go of such property?

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Answer. I am acquainted with the island; have known of it since my childhood, but did not go on it until about the year 1840.

Interrogatory Fifth. Do you know who had possession of said property prior to the year 1860?

Answer. Dr. Walter Brashear.

Interrogatory Sixth. If in answer to the fifth interrogatory you state that prior to 1860, and as far back as your memory goes, Doctor Walter Brashear had possession of said island, then state what purposes the island was used for by Doctor Brashear. In answer to this interrogatory, please give in detail any information you may have on the subject?

Answer. Doctor Walter Brashear raised cane on the island up to about the year 1834 or 1835 and my brother was overseer for him part of a year about 1834 or 1835. From him and others and Dr. Walter Brashear, himself, I acquired this information. The island was used after this time as a cattle ranch by Doctor Walter Brashear and so used until the time of his death in 1860. I know that Dr. Brashear at one time rented the island to a Dr. Tarlton, who had possession of it for about one year only.

Interrogatory Seventh. If in answer to the above interrogatory you state that Doctor Walter Brashear died about the year 1860, do you know who had possession of the island, known as Belle Isle, after Doctor Brashear's death?

Answer. The heirs of Doctor Walter Brashear.

Cross Interrogatory No. 1. If you say that you are acquainted with a certain island situated in the Parish of St. Mary, known as Belle Isle, please state the character of your acquaintance with the said island, how you acquired the same, and for what purpose or object or in what manner such acquaintance was acquired? Please state particularly the occasion or occasions upon which you became acquainted with the property?

Answer. I have been all over the island; have hunted on the island, and have gone on the island with Doctor Walter Brashear at his invitation. I first went on the island about the year 1840—am not certain about the year, but it was that year or a little before or a little after. The last time I was on the island was in 1861.

Second Cross Interrogatory. If you say who was in possession of said property prior to 1860, will you please state how the possession of said property by any person came to
80 your knowledge; what you understand to constitute the possession you speak of, and was such possession, so far as you know, continuous and unbroken, or obtained and had only at certain times that you speak of?

Answer. There was no disturbance that I know of, or have ever heard of, in Doctor Brashear's possession of the island from the time I first knew him up to the time of his death.

Third Cross Interrogatory. If you say that Dr. Walter Brashear had possesion of said island prior to 1860, please state the character of such possession had by Dr. Walter Brahear, whether he occupied and possessed said island himself personally, or through others who purported to hold said possession through or under him; and what means have you of knowing that said island was in possession of other parties; how have you acquired any knowledge of said island being in possession of any person at any time; by your having

seen the parties in possession of the said island yourself, or having been informed by other persons of such possession as you speak of? Have you any personal knowledge at all of any facts of which you have testified in answer to interrogatories herein, or are all your answers based upon statements made to you by other persons; and if all such statements are not founded upon declarations made by other people, how much thereof are so founded?

Answer. Doctor Brashear cleared up the island, established his sugar plantation on it and lived there, together with his family for a number of years. His wife and one of his daughters were buried on the island, so he told me and I have gone to their graves on the island with him. The information that he established a sugar plantation on the island was acquired by me from Dr. Brashear and others. When I first saw the island it was not in cultivation as a cane plantation but was used as a stock ranch. While the island was used as a stock ranch I visited it in company with Doctor Walter Brashear. I have explained in the answer to each question how I came by the information.

his
(Signed) J. N. x WOFFORD.
mark

Sworn to and subscribed before me on this the 23rd day of May, A. D. 1901. (Signed) JOHN B. ROBERTS,
[Seal] Notary Public.

(Indorsed:) Identified with bill of exceptions No. 1 in Heirs of Gonsoulin vs. Gulf Co., No. 12,760, U. S. Circuit Court,
90 Eastern District of Louisiana. Nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Deposition of R. B. LAWRENCE, taken before Thos. F. Green, notary public, Clarke County, Georgia, and acting commissioner, on the 4th day of July, 1901, under a commission issued from the Clerk's office, U. S. Circuit Court, Eastern District of Louisiana, June 28, 1901, New Orleans, Louisiana, in the case of The Heirs of Gonsoulin vs. The Gulf Company, No. 12,760 of the docket of said Court, on behalf of defendant.

Offered by defendant and filed November 12, 1901.

Identified with bill of exceptions No. 1, nunc pro tunc as of November 13, 1901.

Interrogatory 1. State your name, age and place of residence?

Answer. My name is Robert Brashear Lawrence. My age is 54 years, and my present place of residence is Athens, Ga.

Interrogatory 2. Were you acquainted with the late Dr. Walter Brashear who formerly resided in St. Mary Parish in the State of Louisiana? If "yes," how long did you know him, when did he die, and what relation if any did you bear to him?

Answer. Yes, I knew the late Dr. Walter Brashear. I knew him as far back in life as my memory can go, say back to 1854. He died in 1860, aged 85 years. I was his grandson, he being the father of my mother.

Interrogatory 3. Are you acquainted with a certain property situated in the Parish of St. Mary, known as Belle Isle Island? If "yes," how long have you been acquainted with such property, and what are the natural boundaries, if any, of Belle Ise Island?

Answer. Yes, I am acquainted with Belle Isle Island. I have been familiar with it all my life. My grandfather at one time made his home there. My grandmother, her three full grown daughters and son, Denis, are buried there. I have been all over the island very many times from the year 1858 down to the year 1892, when I sold it to R. S. Withers. The natural boundaries of the island are Wax Bayou on the north and west, Doctor's Bayou on the east and the Atchafalaga Bay on the South. The whole of the property within the above named boundries, both high land and marsh land has
91 always been known as Belle Isle or Belle Isle Island.

Interrogatory 4. Who was in possession of Belle Isle Island when you first became acquainted with it and what was the character and extent of such possession, and how long did such possession continue? Give all the facts within your personal knowledge, relative to the possession of this island, as to the character and extent of such possessions from the date of your first knowledge thereof, down to July, 1892.

Answer. When I first knew Belle Isle in the year 1855, it was in the possession of my grandfather, Dr. Walter Brazhear, who had made his home there for many years. He possessed it as sole owner, and he possessed the whole island as above described. That possession continued until his death in 1860. I was at his home at his plantation (Golden Farm), Berwick City, Louisiana, when he was sick and died. At that time (his death) the whole island went into the actual possession of my grandfather's heirs, one of whom was my mother. It remained in their possession until 1869, when it was seized and sold by the U. S. Marshal, in the case of Warfield against them, and at that sale I became the purchaser. From the date of that purchase in 1869 down to July, 1892, the property as above described, i. e., the whole island consisting of high land and low land, bounded as above, was in my possession, either actually in person or by my tenants.

From 1805 to 1860 Belle Isle was assessed in the name of Dr. Walter Brashear, who paid the taxes on it. From 1860 to 1869 it was assessed in the name of the estate of Walter Brashear, and the heirs paid the taxes. From 1869 to 1892 it was assessed in my name, and I paid the taxes regularly.

At one time my grandfather raised sugar cane and made sugar on the island, and shipped it to Boston, Mass., where it was sold at 30 cents per pound, the highest price ever paid for sugar, but on account of many great disadvantages and mosquitoes, he gave up the cultivation of sugar, and made the island a cattle ranch, for which it was admirably adapted on account of the rich vetch pasture afforded by the marsh land and to the fact that the property was entirely surrounded by water. He had several hundred head of beeves grazing there. He had a steamboat of his own called "Old Iron Clad," running between the island and Brashear City, now Morgan City, La., and sometimes New Orleans, La., by the way of the Attakapas Canal and Plaguemine Bayou, and Red River, carrying cattle, odd freights and passengers.

There were houses, gardens, fruit trees (mostly
92 oranges, figs, peaches and plums), on the cleared portion of the high land, and wood and timber was cut from the uncleared portion, during the whole period of possession by my grandfather, by his heirs and by myself. There were many hundred big live oak trees growing on the uncleared portion of the high land. Dr. Brashear had them cut down for solid square timber, and sold it to the U. S. Government for keels for frigates, gunboats, ships, etc., at different times, $1.50 to $2.00 a foot.

Interrogatory 5. Are you the R. B. Lawrence who, on April 24th, 1869, became the purchaser of Belle Isle Island and other property, at a sale thereof, made by the United States Marshal in the case of E. Warfield and others versus the Heirs of Walter Brashear, and who sold said property to R. S. Withers, by an act before M. T. Ducros, notary public, on July 20th, 1892?

Answer. I am the person named in the deeds mentioned.

Interrogatory 6. This is a suit by the Heirs of Gonsoulin claiming title to Belle Isle Island, under a grant made to their ancestors by the Spanish Government in the latter part of the 18th century.

What claim or demand, if any, did the said Heirs of Gonsoulin ever set up against said property while the same was in your possession and when were any such claims or demands made? If no such claim or demand was ever made, then state when you first acquired any knowledge that the said heirs possessed any such claims?

Answer. No claim or demand of any kind was ever made upon me by the Gonsoulins for the Belle Isle, or for any part

of it. I never heard of their claim until I came to sell the property to Withers in 1892, when it was discovered by a record made in the Clerk's office in Franklin, La., that in 1878, they had obtained from the U. S. Government a patent, based on an old claim of their ancestors, which had been decided against them in a suit with my grandfather way back in the twenties.

My attorney, Judge Edward Simon, advised me that the patent was of no value or validity and did not affect my title in the slightest degree. Mr. Wither's attorney, Mr. Stone, was of the same opinion.

Interrogatory 7. In answer to this interrogatory, state any facts within your personal knowledge which may be of benefit to the defendant in this cause, as regards of the ownership and possession of Belle Isle Island by Walter Brashear, his heirs and yourself, as if you had been specially interrogated with reference to such matters.

Answer. My grandfather, Dr. Walter Brashear, was one
93 of the American pioneers of southern Louisiana, Morgan City, before the stupid "nigger" legislature changed its name, was named Brashear City after him. His ownership and uninterrupted possession of Belle Island from 1805 to 1860 is a matter of public history and notoriety in southern Louisiana. Every old resident of St. Mary's parish must know the facts. Belle Isle Island is one of the landmarks of the parish. Popular tradition says it was one of the haunts of Lafitte the "Black Flag" pirate, and the same tradition connects my gradfather's name with that of Lafitte because he (Dr. B.) became the owner and possessor of the island in 1805, and lived there during the period of Lafitte's activity in the Gulf.

Cross Interrogatory 1. If you say that you are acquainted with Belle Isle Island, and that you have ever been in possession of the same, please state the character of your possession, and how much of said island was in your possession, and in what manner your possession, if any, was used or enjoyed.

Answer. My possession of Belle Isle, like that of my grandfather and his heirs, was open, public and notorious and without interruption. It was the actual possession of an owner in good faith, of the whole island. My tenants cultivated all kinds of vegetables and lived on the cultivated land, and used the marsh as a cattle pasture, and paid me rent. They had cattle (domestic) of their own in the island, eating the grass over the marsh around the island. Besides this, I had over fifty head domestic improved bred cattle there.

Cross Interrogatory 2. If you say that the heirs of Gonsoulin ever set up any claim against the property known as the island of "Belle Isle" while same was in your possession,

please state whether or not you have personal knowledge of any such claim being made by any of the heirs of the said Gonsoulin; and if so, by whom; that is to say what party or persons made such claims, and to whom the said claims were made.

Answer. The Gonsoulin heirs never set up or preferred any claim to the island. As stated above, when the title of the property was being examined in 1892, in order to make the sale to Withers, it was discovered that in 1878 they had gotten a patent on the old claim of their ancestors, and had had this patent recorded in the Clerk's office in Franklin, La. This was the first that I ever heard of the Gonsoulin matter. They never brought any suit on the alleged claim of title, or
94 made any demand on me for the property, nor did they ever attempt to disturb my possession of the island. All they ever did until this suit was brought was to record the patent in the Clerk's office at Franklin, La.

(Signed) ..... R. B. LAWRENCE. [L. S.].
Witness.

Answered, sworn, to and subscribed before me, this 4th day of July, 1901. (Signed) THOS. F. GREEN,
N. P. Clarke Co., Ga., Acting Commissioner.

And I further certify that the said R. B. Lawrence, being a deaf mute, I communicated with him by writing, and caused him to read each interrogatory and to write his answer thereto, which answers were copies by me as his answers to said interrogatories and cross interrogatories, and after the same were completed, caused him to sign his said answers.

In testimony whereof, I have hereunto set my hand and official seal on the day and date above mentioned.

(Signed) THOS. F. GREEN, [L. S.]
Notary Public, Clarke Co., Ga., and Acting Commissioner.

Deposition of ROBERT SHARKEY WITHERS, taken before J. M. Sharp, Mayor of Clinton, Miss., and Ex-officio Justice of the Peace, May 24th, 1901, under a commission issued out of the Clerk's office of the U. S. Circuit Court, Eastern District of Louisiana, May 21st, 1901, New Orleans, La., in behalf of defendant in the case of The Heirs of Gonsoulin vs. The Gulf Company, No. 12,760 of the said Court.

Offered and read in evidence and identified with Bill of Exceptions No. 1 in Heirs of Gonsoulin vs. Gulf Company, No. 12,760 U. S. Circuit Court, Eastern Dist., La., nunc pro tunc as of November 13th, 1901.

Deposition of ROBERT SHARKEY WITHERS, of Clinton, Mississippi, May 24, 1901, in the case of The Heirs of Gonsoulin vs. The Gulf Company.

Interrogatory First. State your name, age and place of residence.

Answer. My name is Robert Sharkey Withers. I am forty-four years of age. I reside on a farm near Clinton, Mississippi.

95 Interrogatory Second. Are you the Robert S. Withers who, on July 20, 1892, by act before M. T. Ducros, notary public, in the City of New Orleans, purchased from Robert B. Lawrence a certain property therein described, called Belle Isle Island?

Answer. I am.

Interrogatory Third. If yea, in whose possession did you find said property at the time you purchased the same?

Answer. I found the property in the possession of the agent of my vendor, Robert B. Lawrence.

Interrogatory Fourth. In what capacity did you take possession of said property at the time of said purchase, and how, and to what extent did you take such possession?

Answer. I took possession of said property as a bona fide owner. I took possession of the whole of said Belle Isle as it was described in the deed to me, both high land and marsh land, i. e., the island as bounded by the Doctor's bayou, Wax bayou and Atchafalaya bay. There were about fifty resident tenants living on the place, most of whom I evicted, and afterwards being troubled with trespassers on the marshes, I put up trespass signs and kept all such persons off the property. In August, 1892, I built a house on the island and did a great deal of other improvements, and lived there with my family until shortly before the property was sold and delivered by me to G. G. Dorwin.

Interrogatory Fifth. Did you have the title to said property examined at the time you purchased the same, and what was the report made to you upon the title which you purchased?

Answer. Yes, the title to said property was examined by my attorney, Hon. John B. Stone, who reported that the title in Doctor Walter Brashear was absolute. The only question in his mind was whether the other heirs of said Doctor Brashear had any interest in this property, and for this reason I communicated with his heirs and obtained the annexed certificate, dated Tom's River, N. J., June 1st, 1892, signed by Townsend Lawrence, Lydia L. Lawrence, Francis E. Lawrence and M. B. Lawrence, all of the heirs of Doctor Walter Brashear aforesaid, except Walter Brashear, of the City of New Orleans, La., who had no rights in the matter because of a compromise

passed in 1881 between himself and the heirs of H. E. Lawrence. I also annex hereto a copy of R. B. Lawrence's title handed to me by his agent at the time of my purchase.

Interrogatory Sixth. During the period that you owned and possessed said property, was any claim of any kind or nature ever made upon you by the heirs of Gonsoulin, setting up any title to said property so possessed by you? If yea, when was such claim made, and how?

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Answer. No. Never at any time or under any circumstances.

First Cross Interrogatory. If you state that any person was in possession of the property about which you are interrogated, at the time you purchased it, please state how you acquired knowledge of such possession; and have you any personal knowledge at all of any possession of said property by any other person at the time you purchased it, or, is the answer you make upon this subject based upon statements or declarations made to you by anyone else?

Answer. I acquired a knowledge of the possession of R. B. Lawrence through his agent at Belle Isle by personal inquiry and observation. I visited the island several times myself and obtained knowledge in person of what I herein testify to. I testify of my own personal knowledge of this matter. At the time I took possession of Belle Isle no person but R. B. Lawrence, through his agent, had possession of it. If there were other claimants to it they never made their claims known to me. There were a number of tenants on the island who paid rentals to the agent of R. B. Lawrence. Some uncollected rents were turned over to me when I bought the place and were subsequently collected by me. I evicted most of these tenants and they all left the prmises willingly and made no claims to me whatsoever to the title or possession of the place.

Second Cross Interrogatory. Please state particularly all the facts and circumstances under which you took possession of the said property at the time of your purchase of it, and also state whether or not you yourself ever personally took possession of the property; if you ever took any possession at all, either by yourself personally, or through anyone else, please state the exact portions of the property in question of which you took such possession.

Answer. I have answered this interrogatory fully in my answer to direct interrogatory fourth. As there stated, I found the whole island in the possession of R. B. Lawrence's agent. I went on it in person, built a house there in August, 1892, and lived there with my family till I sold the island, or property to G. S. Dorwin. I took possession of the whole island as described in the deed to me. I evicted on several occasions

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trespassers from various parts of the marsh land. My

cattle ranged over the whole tract as bounded in the deed to me, and I was constantly going over it looking after and protecting my stock and property rights.

Third Cross Interrogatory. Have you not known that before and subsequent and during the continuance of your asserted purchase of the property in question that the ownership of it was claimed by the plaintiffs in this suit?

Answer. I was informed by my lawyer who examined the title that some "Cajuns," whose names I never knew, had set up a claim to Belle Isle, but that said claim had been settled by a judgment of the Louisiana Supreme Court about sixty years before I bought it, and I was also informed by my attorney and Judge E. Simon, who was Mr. R. B. Lawrence's lawyer, that his (Simon's) father had been Doctor Walter Brashear's lawyer in this matter and that this "Cajun's" patent or claim was based on the same title which was annulled by the Supreme Court of Louisiana and that it was of no value or validity. I was in possession of the said property openly and visibly about six years and none of the Gonsoulins or anyone else ever made any claim to me to said property in any manner, or form, by word or by deed.

(Signed) R. S. WITHERS.

Sworn to and subscribed before me, this 24th day of May, 1901.

(Signed) J. M. SHARP,
[Seal] Mayor (and Ex-officio Justice of the Peace) of Clinton, Mississippi.

And after the said deposition had been by me carefully reduced to writing, and read over to said R. S. Withers, he signed the same in my presence.

In witness whereof, I hereunto set my hand and affixed the seal of my office, this 24th day of May, 1901.

[Seal) (Signed) J. M. SHARP,
Mayor of Clinton, Miss., Ex-officio Justice of the Peace.

Tom's River, N. J., June 1st, 1892.

The undersigned heirs of Walter Brashear hereby acknowledge that Robt. B. Lawrence, another heir of said Walter Brashear, is the sole true and lawful owner under his deed from the United States Marshal of the property called Belle Isle on Wax bayou and the Atchaffalaya bay; that he has been in possession of said property and collected the rents
98 since his purchase 23 years ago; and that the taxes have been regularly paid.

(Signed) TOWNSEND LAWRENCE,
LYDIA L. LAWRENCE,
FRANCES E. LAWRENCE,
M. B. LAWRENCE.

(Indorsed:) Exhibit No. 1 to answer to 5th Interrogatory. Certificate annexed to Deposition of R. S. Withers. See Interrogatory Fifth. J. M. Sharp, Mayor (and Ex-officio Justice of the Peace) of Clinton, Miss. Heirs of Gonsoulin vs. The Gulf Company.

Whereas, I, F. J. Herron, Marshal of the United States for the District of Louisiana by virtue of a writ of fieri facias directed to me by the Honorable the Circuit Court of the United States for the Fifth Judicial Circuit and District of Louisiana, at the suit of E. Marfield, et als., vs. The Heirs of Walter Brashear, No. 161 of the docket of said Court, after having fulfilled and complied with all the previous legal requisites, did seize the following described property, to-wit:

1st. A tract of land formerly known as the Tiger Island plantation, lying on the east side of Berwick's bay, in the Parish of St. Mary, bounded above by Flat Lake, below by town of Brashear and in the rear by land claimed by Florence and Knapp, which tract contains about (1500) fifteen hundred acres, more or less.

2nd. A tract of land on the west side of Berwick's bay in the Parish of St. Mary, bounded above by lands of John Rhodes and Rentrope and below by lands of the heirs of Nathan Berwick, which tract was formerly known as "Golden Farm Plantation," and contains five hundred acres of land, more or less.

3rd. A tract of land fronting on "Wax bayou and Atchafalaya bay, in the Parish of St. Mary, containing four hundred acres of land, more or less, and known as "Belle Island."

4th. A house and lot in the town of Franklin, Parish of St. Mary, fronting 80 feet on Main street, 300 feet on Jackson street, and 80 feet on First street, forming the corner of Main, Jackson and First streets.

5th. A house and lot in the town of Brashear, Parish of St. Mary known as lot No. 10 of square No. 1, and lots Nos. 1, 2, 3, 6, 7, 8, 9, and 10 of square No. 16.

Lots Nos. 1 to 9, inclusive, of square No. 11. Lots Nos. 1 to 7, inclusive, in square mkd. L.

99 Lots Nos. 1 to 14, inclusive, in square No. 19.

Lots. Nos. 1 to 13, inclusive, in square mkd. 1.

Lots in triangular piece, square or track No. 12.

The lots in the town of Brashear as represented in Barnes' survey and plan of the town of Brashear, and after having given due and legal notice to the said defendants of the said seizure, in the manner pointed out by law, I advertised the said property for sale, after the expiration of the proper legal delay from the time of service of said notices by advertisements composed in English announcing the sale to take place at the Courthouse in

the town of Franklin, Parish of St. Mary, State of Louisiana, on the 24th day of April, 1869, at the hour of 12 o'clock M. Said advertisements were inserted and published in two papers, to-wit: in the "Commercial Bulletin," in the City of New Orleans, and in the "Attakapas Register," printed and published in the town of Franklin, Parish of St. Mary, from the 20th day of March, 1869, to the day of sale, being full thirty days from the date of the first publication in said newspapers, said advertisements were inserted and published in said newspapers on the 20th and 27th March, 1869, and on the 3d, 10th, 17th, and 24th of April, 1869, and after having further complied with and performed all the additional previous legal requisites and after having the said property appraised, I do expose the same at public sale, at auction, according to law, at the said Courthouse in the town of Franklin, Parish of St. Mary, on the said 24th day of April, 1869, at 12 o'clock M. of that day and at the time and place of sale, I did read verbatim, in a loud and audible tone of voice the certificate of the recorder of mortgages of the Parish of St. Mary, dated April 20th, 1869, and by which certificate it appears that there are no other mortgages resting against the said before described property thereon the following, to-wit:

1st. A special mortgage in the name of Nancy P. Brashear in favor of the estates of Robert B. and Thomas T. Brashear, securing the payment of one hundred and fifty thousand dollars, with eight per cent. per annum interest from June 30th, 1860.

Recorded July 3rd, 1860.

2nd. A judicial mortgage E. Warfield vs. Walter Brashear, for thirty thousand dollars with six per cent. per annum interest from September 17th, 1839, the settlement and adjustment of all the liabilities of administrator, heirs and devisees of R. R. Barr, dec'd., and all costs of suit.

3rd. A judicial mortgage Susanna Ireland vs. Succession of Robert B. Brashear for $7,496 44-100, with ten per 100 [cent.] per annum interest from June 2, 1853, and all costs. Recorded Sept. 25, 1866.

4th. A judicial mortgage Henry E. Lawrence vs. R. B. Brashear canceling sale and for all costs in suit No. 4832, recorded Nov. 5th, 1866.

5th. A judicial mortgage E. Warfield, et als., vs. Heirs of Walter Brashear, decreeing that the judgment rendered January 14th, 1840, against Walter Brashear be revived and made executory against his heirs and legal representatives, with costs. Recorded June 16, 1867.

6th. State and other taxes $116.00. Recorded Dec. 10, 1866.

7th. State and other taxes $98 76-100. Recorded Dec. 20, 1867.

8th. A judicial mortgage Madison C. Johnson vs. J. B. Murphy, Adm'r., that the judgment, Madison C. Johnson vs. Walter Brashear rendered by the Supreme Court Sept. 23rd, 1843, be revived and to have full force and effect in law, and that H. E. Laurence, dative testamentary executor of Walter Brashear, dec'd., be decreed to allow said judgment, and to pay the same in due course of administration. Recorded October 3rd, 1868.

9th. State and other taxes $201 60-100.

When, after announcing to the bystanders the terms and conditions of sale and after duly crying the said property it was all, with the exception of the house and lot 4thly described on the first page hereof, adjudicated unto Robert B. Lawrence, of ..... he being the last and highest bidder thereon, for the price and sum of ($14,537) fourteen thousand five hundred and thirty-seven dollars cash in U. S. treasury notes, which sum I hereby acknowledge to have received in ready current money of the United States, and the said purchaser assumes the payment of all taxes of every nature and description which may now be due on the said property or which may hereafter be found to exist against it.

Now, therefore, know all men by these presents that I, the said Marshal, in consideration of the premises, and by virtue of the laws in such case made and provided, do sell and transfer the said before described property (with the exception above noted) to the said Robert B. Lawrence, and all the rights and titles which the said heirs of Walter Brashear had into the said before described property, to have and to hold the same to the said Robert B. Lawrence, his heirs and assigns forever.

In witness whereof I have hereto signed my name, at
101 New Orleans, in the State of Louisiana, this the thirtieth day of April, in the year one thousand eight hundred and sixty-nine, and the 93rd year of the independence of the United States of America.

F. J. HERRON,
U. S. Marshal, District of Lousiana.

Original signed in presence of:
J. R. WEST,
C. L. EDE.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

Clerk Office.

I hereby certify the foregoing deed of sale was this day duly recorded in this office in book of sales No. 2, folio 321, 322, 323 and 324.

Witness my hand and seal of said Court, at New Orleans, this 15th day of June, 1869.

(Signed) D. URBEN, Clerk,
By F. D. VINOT, Dy. Clerk.

Clerk's Office,
St. Mary's Parish, Louisiana.

I certify the foregoing is a true and correct copy of the act of sale recorded in book "Q" of conveyances, page 95, entry No. 11,627 of my office inscribed therein on the 27th day of June, 1869.

In evidence whereof, witness my hand and official seal, this 21st day of May, A. D. 1890.

[Seal] (Signed) J. B. VERDEN, JR.,
Deputy Clerk.

And I do further hereby certify that prior to the above and foregoing sale from the Marshal of the United States, District of Louisiana, to Robt. B. Lawrence, the property described in said sale as "Belle Island," was in the name of Walter Brashear and the title to same was in said Brashear as is shown by the books of record of the Clerk's office of the Parish of St. Mary.

In evidence whereof, witness my hand and official seal, this 21st day of May, A. D. 1890.

[Seal] (Signed) J. B. VERDEN, JR.,
Deputy Clerk.

(Indorsed:) Exhibit No. 2. Title annexed to Deposition of R. S. Withers. See answer to 5th interrogatory. J. M. Sharp, Mayor (and Ex-officio Justice of the Peace), Clinton, Miss.

102 (Indorsed:) Identified with bill of exceptions No. 1, in Heirs of Gonsoulin vs. Gulf Company, No. 12,760, U. S. Circuit Court, Eastern District of Louisiana; nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Deposition of GUSTAVE SYLVAN DORWIN, taken before Louis S. Phillips, a Notary Public, on the 27th day of May, 1901, in the City of New York, under a commission issued from the Clerk's office of the United States Circuit Court, Eastern District of Louisiana, City of New Orleans, dated May 21, 1901, in the cause entitled Heirs of Gonsoulin vs. The Gulf Company, No. 12,760 of the docket on behalf of defendant.

Offered by defendant, read in evidence on the trial and filed Nov. 12, 1901.

Identified with Bill of Exceptions No. 1. Nunc pro tunc, as of November 13, 1901.

Interrogatory First. State your name, age and place of residence?

Answer. My name is Gustave Sylvan Dorwin; 38 years of age; residence, Hotel Martinique, New York City, N. Y.

Interrogatory Second. Are you the Gustave Sylvan Dorwin, who, on the 15th day of May, 1897, by act before Charles T. Soniat, Notary Public, purchased the property known as Belle Isle Island from Robert Sharkey Withers?

Answer: I am the same person who, on the 15th day of May, 1897, by act before Charles T. Soniat, Notary Public, purchased the property known as Belle Isle from Robert S. Withers.

Interrogatory Third. If you answer yea, then state in whose possession you found the said island at the time of such purchase, and what the extent of such possession was?

Answer. I found the island in the possession of Robert S. Withers. It was his home and he resided there with his family. He claimed and had possession of the whole island as bounded by the waters of Atchafalaya Bay and Doctor and Wax Bayous.

Interrogatory Fourth. In what quality and character did you enter into possession said island under the said deed from Withers, and what examination, if any, did you cause to be made of the title of said property, who made said examination, and what report was made to you as to the title of Withers to said property?

103 Answer. I went into actual possession of said property as owner in good faith. The title was examined by Mr. Farrar, of Farrar, Jonas & Kruttschnitt, who declared the same perfect.

Interrogatory Fifth. During your possession of said property, what claim, if any, was preferred to the title and ownership thereof by the Heirs of Gonsoulin, or any other person, and when and how were such pretensions advanced if any?

Answer. During my ownership no claim of any kind was ever preferred to the ownership and possession of the property by the heirs of Gonsoulin or any other person except as to some claims made by the heirs of the wife of Robert S. Withers, who died subsequent to my purchase, and which claims were adjusted.

First Cross Interrogatory. If you say that you are acquainted with the property in St. Mary parish, known as Belle Isle, please state what is the character of your acquaintance with the said property; have you yourself ever been upon the property or any portion of it, and if so, when and how often; or is your ac-

quaintance with the property such as is derived from hearing it mentioned or spoken of as a property or island in the Parish of St. Mary?

Answer. My knowledge of Belle Isle is personal. I have been on the property many times, both before and since my purchase of it. Before my purchase I visited the island several times in company with A. F. Lucas, who had made borings on the island for minerals. After my purchase I lived upon the island and conducted borings to verify the discoveries claimed to have been made by said Lucas.

Second cross interrogatory. If you state that prior to 1860, Dr. Walter Brashear had possession of said island, will you please state how you acquired knowledge of such possession; whether or not you ever saw Dr. Walter Brashear in possession of the said island, or whether or not his possession was through other persons holding under him, and if so, who were said persons, and what was the character of their possession?

Answer. I know nothing of the possession of said island by Dr. Walter Brashear except by hearsay.

Third cross interrogatory. If you state that any person had possession of said island subsequent to 1860, will you please state how you acquired knowledge of such possession, whether you knew it personally or whether you acquired it from statements made by other parties, and if so, by the statements
104 of whom; when were they made and what were their tenor and effect?

Answer. I know nothing of the possession of said island since 1860, except the possession of Robert S. Withers, whom I found in possession when I first visited the island early in the year 1897.

(Signed) GUSTAVE SYLVAN DORWIN.

Subscribed and sworn to before me this 27th day of May, 1901. (Signed) LOUIS S. PHILLIPS,
[Seal] Notary Public, N. Y. Co.

(Indorsed:) Identified with bill of exceptions No. 1, in Gonsoulin vs. Gulf Co. No. 12,760, U. S. Circuit Court, Eastern District of Louisiana. Nunc pro tunc as of November 13th, 1901. (Signed) Charles Parlange, U. S. Judge.

Certified copy of patent issued August twenty-first, 1878, to Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin for Sections 28, Tp. 17 S. R. 10 E. and 19, Tp. 17 S. R. 11 E. in Louisiana, containing 2826.28 acres. Certified by Binger Hermann, commissioner of general land office, dated Washington, D. C., February 15, 1900.

Offered by plaintiff and filed November 12, 1901. Referred to in bill of exceptions No. 1.

G. S. W. W. W. H. L.

(Cancelled U. S. Int. Rev. 10c Documentary Stamp 4-205.)

Department of the Interior,
General Land Office,
Washington, D. C., February 15, 1900.

I, Binger Hermann, commissioner of the general land office, do hereby certify that the annexed copy of patent, issued August twenty-first, eighteen hundred and seventy-eight, to Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin for Sections 28, Tp. 17 S. R. 10 E. and 19, Tp. 17 S. R. 11 E. in Louisiana, containing 2826.28 acres, in a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
[Seal] Commissioner of General Land Office.

105 THE UNITED STATES OF AMERICA.

To all to whom these presents shall come—Greeting:

Whereas, there has been deposited in the General Land Office of the United States, a patent certificate numbered ninety-four of the Register of the Land Office at New Orleans, in the State of Louisiana, whereby it appears by the Act of Congress approved on the twenty-ninth day of April, A. D. one thousand eight hundred and sixteen, entitled "An Act for the confirmation of certain claims to land in the Western District of the State of Louisiana and in the Territory of Missouri," the claim of Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin, entered as B. No. 33 in the report, dated the first day of May, A. D. one thousand eight hundred and fifteen, of the commissioners for the Western District of the State of Louisiana, formerly territory of Orleans, has been confirmed.

And whereas, said claim has been regularly surveyed and designated as section twenty-eight in township seventeen, south of range ten east, and section nineteen in township seventeen, south of range eleven east, in the late Southwestern District in the State of Louisiana, containing two thousand eight hundred and twenty-six acres and twenty-eight hundredths of an acre, as appears by a plat of survey thereof on file in the general land office, duly approved by O. H. Brewster, surveyor general of the State of Louisiana, on the twenty-escond day of April, A. D. one thousand eight hundred and seventy-eight,

which said plat and description are in the words and figures as follows, to-wit:

(N. B. The plat representing the survey of track [tract] of land made in conformity with report No. 33, issued by the commissioners of Western District Louisiana in favor of Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin, appearing here in the original and omitted herefrom, is to be transmitted in the original, along with this transcript, as per stipulation copied at page 174 hereof.)

"The above plat represents the survey of a track of land made "in conformity with report No. 33, issued by the commissioners "of Western District Louisiana, in favor of Dautrieve Dubuc- "let, Benoist De St. Clair and Francois Gonsoluin, which claim "is embraced in commissioners report dated May 1st, 1815, and "was confirmed by Act of Congress approved the 29th day of

"April, 1816, entitled 'An Act for the confirmation of
106 "certain claims to land in the Western District of the
"State of Louisiana and in the territory of Missouri,' the "following being a description of the survey taken from the ap- "proved field notes of A. F. Rightor and Andrew McCollam, dep- "uty surveyors:

"Beginning at (A) on Wax Bayou, thence on upperline of "claim S. 48 E. 21.00 chs. a bayou 3.00 chs. wide, 146.36 chs. "to (B) S. E. corner of this claim a mound and stake, thence "on back line S. 42 W. 166.12 chs. to a bayou 2.50 chs. wide, "199.62 chs. to Lake Belle Isle, 222.92 chs. to (C) on the "township line 32.35 chs. from the corner of sections 30 and "31, 242.42 chs. to (D) S. W. corner of this claim, thence "on lower line of this claim N. 48 W. 69.06 chs. to a bayou "1.00 ch. wide. 116.36 chs. to (E) lower front corner of this "claim, thence traverse of Wax Bayou in front of this claim, "N. 87 E. 19.50 chs. N. 41¼ E. 4.00 chs. a small bayou 160 "ch. wide, 22.00 chs. east 19.00 chs. N. 20 E. 15.00 chs. N. "45 W. 24.60 chs. N. 67 E. 29.50 chs. a bayou 4.00 chs. wide, "38.00 chs. N. 40 W. 49.00 chs. N. 50 E. 30.00 chs. S. 60 E. 20.00 "chs. North 18.33 chs. N. 61½ E. 15.35 chs. a bayou 1.20 chs. "wide, 31.00 chs. East 33.00 chs. North 25.00 chs. N. 50 W. "8.50 chs. bayou 1.30 chs. wide, 29.00 chs. N. 20 E. 6.00 chs. to "upper line of claim and (A) the place of beginning.

Being Sec. No. $\frac{28}{19}$ in township No. $\frac{17 \text{ south}}{17 \text{ south}}$ of range No. $\frac{10 \text{ E.}}{11 \text{ E.}}$ "Southwestern District, Louisiana, containing 2,826 acres and "28 hundredths of an acre.

"Surveyor general's office, New Orleans, La., April 22, 1878.

"Examined and approved.

"O. H. BREWSTER,
"Surveyor General, La."

Now know ye, That the United States of America, in consideration of the premises and in conformity with the said Act of the twenty-ninth day of April, A. D. one thousand eight hundred and sixteen, have given and granted and by these presents do give and grant unto the said Dautrive Dubuclet, Benoist De St. Clair and Francois Gonsoulin or to their legal representatives or to their heirs and assigns the tracts of land embraced and described in the foregoing survey.

To have and to hold the said tracts of land, with the appurtenances unto the said Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin, and to their legal representatives, and to their heirs and assigns forever.

107 In testimony whereof I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent and the seal of the general land office to be hereunto affixed.

Given under my hand at the City of Washington this twenty-first day of August, in the year of our Lord one thousand eight hundred and seventy-eight and of the independence of the United States the one hundred and third.

By the President: R. B. HAYES.
[L. S.] By WM. H. CROOK, Secretary.

S. W. CLARK,
Recorder of the General Land Office.

Clerk's Office,
Parish of St. Mary, La.

I, John R. Parkerson, Clerk of the 24th Judicial District Court of the State of Louisiana, and Ex-Officio Recorder of the Parish of St. Mary, do hereby certify that the above and foregoing patent from the United States to Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin has been duly recorded in Book "X" of Conveyances, entry No. 16,184, page 292, et seq., of my office. Inscribed therein on the 20th day of January, A. D. 1887.

In evidence whereof, witness my hand and official seal this 7th day of May, A. D. 1900.

(Signed) JNO. R. PARKERSON,
[Seal] Clerk and Ex-Officio Recorder, Parish of St. Mary, La.

(2 Cancelled U. S. Int. Rev. 2 Documentary Stamps.)

Additional Note of Evidence Deft.

Filed Nov. 13, 1901.

United States Circuit Court, Eastern District of Louisiana.

HEIRS OF GONSOULIN
vs. No. 12,760.
THE GULF COMPANY.

23. Testimony of ....., clerk of Surveyor General, who produced and identified the original maps in said office of Townsaip 17 S. R. 10 E. and of Township 17 5 R. 11 E., and who testified that the original field
108 notes of A. F. Rightor and Andrew McCullom, deputy surveyors, of report No. 33 of grant to Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin, as appearing in said maps, were in the office of the Surveyor General.

24. Certified copy of official maps from office of U. S. Surveyor General of Louisiana, Township 17 S. R. 10 E. and Township 17 S. R. 11 E., and certified copy of field notes of A. F. Rightor and Andrew McCullom of survey of grant No. 33 to Dubuclet, St. Clair and Gonsoulin.

United States Circuit Court, Eastern District of Louisiana.

HEIRS OF GONSOULIN
vs. No. 12,760.
THE GULF COMPANY.

Field Notes Offered by Defendant November 13, 1901.

Filed Nov. 14, 1901.

T. 17 S. R. 11 E. Southwestern District La.

West Boundary of T. 17 S. R. 11 E. being East Boundary of T. 11 S. R. 10 E.

Beginning at mound and stake S. W. cor. of T. 17 S. R. 11 E. Thence north on 1st mile of

West Boundary.

13.00	Lake Bell Isle, Mound and Stake.
59.00	x the Lake Mound and Stake.
80.00	post corner to Sections 30 and 31 in improved land Mound and Stake.

2nd Mile North.

40.00 ¼ Section post in improvement stake
44.00 leave the improvement and enter marsh.
52.00 a bayou, 3.00 chs. wide
80.00 post corner to Sections 19 and 30 in low marsh, mound and stake
3rd Mile North.
40.00 ¼ Section post mound and stake
80.00 post corner to Sections 18 and 19 in marsh mound and stake
4th Mile North
7.32 Wax Bayou 5.70 chs wide, mound and stake
40.00 ¼ Section post, mound and stake.
109 80.00 post cor. to Sections 7 and 18 in marsh, mound and stake.

* * * * * * * * * * *

Traverse.

Traverse of left bank of Wax Bayou from Township in front of Section 19, confirmed to Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin No. 33.

N. 61 ½ E. 18.00 chs. a bayou 1.20 chs. wide
31.00 chs. end of course
East 33.00 chs.
North 25.00 chs.
N. 50 W. 8.50 chs. a bayou 1.30 chs. wide
29.00 chs. end of course
N. 20 E. 6.00 chs. to the upper line of the claim, mound and stake

* * * * * * * *
* * * * * * * *

Section 19 Claim "confirmed to Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin No. 33.
Commencing at a post on Wax Bayou, thence
S. 48 E. 21.00 chs. a bayou 3 chs. wide
146.36 chs. to corner, mound and stake
Thence
S. 42 W. 166.12 chs. a bayou 2.50 chs. wide
199.62 chs. Lake Belle Isle
222.92 chs. through the Lake to where it intersects the West Boundary of Township 32.35 chs from the corner of sections 30 and 31.

* * * * * * * *
* * * * * * * *

T. 17 S. R. 10 E. Southwestern Dist. La.

Traverse in front of the St. Clair claim Section 28 up Wax Bayou

N. 87 E. 19.50 chs. (post on the opposite side due north 6.51 chs.

21.00 chs. end of course

N. 41 ¼ E. 4.00 chs. a small bayou 1.60 chs. wide

22.00 chs. end of course.

East 19.00 chs.

N. 20 E. 15.00 chs.

110 N. 45 W. 24.60 chs. due west 5.74 chs. to corner on the opposite side

N. 67 E. 29.50 chs. a bayou 4 chs. wide

38.00 chs. end of course

N. 40 W. 49.00 chs.

N. 50 E. 30.00 chs.

S. 60 E. 20.00 chs.

North 18.33 chs. (the corner on the opposite side due west 5.52 chs.)

N. 61 ½ E. 15.35 chs. to East Boundary of Township, mound and stake.

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Lower line of the claim confirmed to St. Clair and others No. 33 and Section 28.

S. 48 E. 46.30 chs. a Bayou 1.00 ch. wide

116.36 chs. post corner near the Lake Bell Isle,

Thence

N. 42 E. through the Lake

19.50 chs. to township line 7.65 chs. North of ¼ Section post in Lake.

* * * * * * * *

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Surveyed in the fall and winter of 1837 and 1838.

A. F. RIGHTOR,
ANDREW McCOLLAM,
Deputy Surveyors.

Var. 9 East.

Surveyor General's Office,
Donaldsonville, August 1st, 1838.

The foregoing field notes from page 1 to page 76, inclusive, in the Southwestern District Louisiana, surveyed by A. F.

Rightor and A. McCollam, deputy surveyors, under contract of 10th October, 1837, have been examined and are approved.

(Signed) H. T. WILLIAMS,
Surveyor General, La.

Surveyor General's Office,
New Orleans, La., Nov. 14th, 1901.

I certify the above and foregoing field notes to be true and correct extracts from the records on file in this office.

(Signed) JAMES LEWIS,
[Seal] Surveyor General, La.

111 HEIRS OF GONSOULIN
vs. No. 12,760.
THE GULF COMPANY.

U. S. Circuit Court, Eastern District of Louisiana.

Map of Survey Offered by Defendant November 13, 1901, and Filed November 14, 1901.

Referred to in Defendant's Additional Note of Evidence Filed Nov. 13, 1901.

N. B. The map of survey is omitted from this transcript; and in accordance with the stipulation, filed and copied into this transcript at page 174 hereof, is to be transmitted in the original along with this transcript to the United States Circuit Court of Appeals for the Fifth Circuit.

Bill of Exceptions No. 2.

Filed as of Date November 13, 1901, Nunc pro tunc.

HEIRS OF FRANCOIS GONSOULIN AND WIFE, ET AL.,
vs. No. 12,760.
THE GULF COMPANY.

United States Circuit Court, Eastern District of Louisiana.

Bill of Exception.

Be it remembered that on the 12th day of November, nineteen hundred and one, the above entitled and numbered cause came on for trial before the above court, and a jury fully empaneled, all as is set forth and described in Bill of Exceptions No. 1, herein taken in this cause, which is specially referred to so far as may be necessary as a part of this bill.

That in the course of said trial, after there had been offered, introduced and submitted to the jury all of the testimony and evidence which is set up in the said bill of exceptions No. 1, no other evidence or testimony being offered or introduced by either plaintiff or defendant upon the said trial, defendant through its counsel, requested the Court to instruct the jury to find a verdict for defendant, which request then and there granted and allowed by the Court, insofar as defendant's
112 pleas of prescription were concerned, which accordingly instructed the jury to find a verdict for the defendant on said plea of prescription; that plaintiffs then and there excepted to the said instruction or direction of the Court to find a verdict for the defendant, which exception was then and there allowed by the Court, and plaintiffs now tender this their bill of exceptions to the Court to sign and seal, and the Court does hereby sign and seal the same.

And now, in furtherance of justice and that right may be done, the Court allows the said exceptions and bill of exception and signs and certifies the same.

Done in open court nunc pro tunc as of November 13, 1901, and ordered filed as of that date, and I certify that this bill was duly and seasonably presented to me for signature.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Hearing and Verdict.

Extract from the Minutes.

November 13th, 1901. November Term, 1901.

New Orleans, Wednesday, November 13, 1901.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, District Judge.

HEIRS OF GONSOULIN
vs. No. 12,760.
THE GULF COMPANY.

United States Circuit Court, Eastern District of Louisiana.

This cause came on this day to be further heard, the counsel for the respective parties and the jurors empaneled in the cause being all present.

After hearing further evidence and arguments of counsel, the Court delivered its charge to the jury, and the said jury did then and there in open court, under the instructions of the Court, render and deliver the following verdict, to-wit:

We, the jury, find in favor of the defendant, the Gulf Company, of New Jersey, and against the plaintiffs on the plea of prescription, and against the Gulf Company on their plea of res adjudicata, as in case of non-suit.

H. R. LABOUISSE, Foreman.

Nov. 13, 1901.

113 Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

Order—Plaintiff Allowed 10 Days to Prepare and Present Bills of Exceptions.

Extract from the Minutes.

Wednesday, November 13, 1901.

HEIRS OF GONSOULIN
vs. No. 12,760.
THE GULF COMPANY.

On motion of B. K. Miller, of counsel for plaintiffs, it is ordered that they have 10 days to prepare and present bills of exceptions herein taken.

Application for Rehearing, and Authorities in Support of Same.

Filed November 18th, 1901.

HEIRS OF GONSOULIN
vs. No. 12,760.
THE GULF COMPANY.

United States Circuit Court, Eastern District of Louisiana.

On motion of David Todd and Branch K. Miller, attorneys for plaintiff,

It is ordered, that the defendant show cause on Saturday, the ..... day of November, 1901, why a new trial should not be granted herein, on the following grounds, to-wit:

1st. That the Court erred in holding that there was any divestiture of the title of the United States in favor of Walter Brashear or Samuel Watson by the confirmation obtained by the latter from the Board of Land Commissioners; that the said confirmation was made under the authority of the Act of March 3rd, 1807, Second Statutes at Large, page 440; that the procedure in case of the final decision of the Board of Commis-

sioners in favor of a claimant authorized by Section 4 did not become conclusive or effective until a copy of the said
114 confirmation being filed in the land office, and survey and plat of the land designated in the confirmation made by the surveyor general or other officer acting as such, when and after which, the claimant was entitled to obtain from the land office a certificate of the confirmation, and its registry, which upon presentation to the Secretary of the Treasury (or Interior) entitled the party to a patent; that the confirmation by the commissioners was by said act made to depend for its effect, and was conditioned upon a subsequent survey of the land under the authority of the United States, and until such survey was made, subsequent to the confirmation, and the filing thereof in the land office, the confirmation was simply an inchoate title to an unlocated tract of land, and applying to no particular tract, until a survey of the same was made, designating and identifying the land thereby covered, the title to the land, the subject of the confirmation, remained in the United States.

West vs. Cochran, 17 Howard 403-414-415-416.

Synder vs. Sickles, 98 U. S. 203-213, et seq.

That the act of 1807 intended that the commissioners should adjudge the existence of good titles to lands held under French or Spanish possession, but did not intend that a final or legal title as against the United States should be made until their bonds had been ascertained and the particular tract defined by survey.

West vs. Cochran, 17 H. 415-416. 98 U. S. 213.

Willot vs. Sanford, 19 H. 79-82.

Cousin vs. Labatut, 19 H. 202-210.

Magwire vs. Tyler, 1 Black, 195-201-202.

Kissell vs. St. Louis Public School, 18 H. 21.

The reference in the confirmation to a survey of the land by Carlos Trudeau, Spanish Survey General, does not dispense with the necessity of a survey under the authority of the United States, made subsequent to the confirmation; a survey under the Spanish government could only dispense with the necessity of one by the United States, when the Spanish survey had been filed with the register or recorder or appeared in the public records of the territories of Orleans or Louisiana; and there is no evidence of such filing or record of said survey of Trudeau.

Where there has been no filing or such record of the survey a survey by the surveyor general of the United States is imperative.

See section 7, Act of March 3rd, 1807, Second Statutes at Large, 440.

Besides the mere mention of said Spanish survey in
115 the confirmation, was no designation of the location or boundaries of the land it covered, and would still leave the tract unlocated and unidentified, thus requiring these to be effected by a survey of the United States.

Until such survey was made the United States could sell the land and give a patent therefore to any person other than the claimant.

19 Howard, 209-210.

When, under said Act of 1807, the decision of the commissioners was final in favor of a claimant, a patent was still necessary to convey a title; the report was conclusive evidence of an equitable title and nothing more.

Burgess vs. Gay, 16 H. 63.

In West vs. Cochran, 17 H. 411, where a survey under the United States was necessary to complete the title of a claimant after confirmation, there was in the commissioners' certificate of confirmation a reference to a Spanish survey, to the same effect as there is here, in these words: "A survey of the same taken the 2nd March, and certified April 10th, 1799," but this was held not sufficient to dispense with the requirement of a subsequent survey of the United States in order to convert the equitable title resulting from the confirmation into a legal title upon which claimant could obtain a patent.

West vs. Cochran, 17 H. 410-411-416.
Kissell vs. St. Louis Public Schools, 18 H., p. 25.
Stanford vs. Taylor, 18 H. 409-412.
Carondelet vs. St. Louis, 1 Black 179-189.

Even if the survey was made in 1802 by Carlos Prudeau, the Spanish Surveyor General, it could be of no effect whatever, since in all acts of the Spanish authorities looking to the completion of a title to public lands was null and void after the treaty of San I Del Fonso, February 1st, 1800.

Davis vs. Police Jury, 9 H. 280-288.
United States vs. Reynes, 9 H. 150.
Mezes vs. Greer, 17 Fed. Cases, page 251-253, No. 9,520.

2nd. That the Court erred in holding that the dictum found in the case of Gonsoulin vs. Brashear, 5th Martin N. S., p. 35: "The government of the United States have relinquished their title to both," (plaintiff and defendant) was conclusive to the effect that Brashear had at the date of that suit acquired the legal title of the United States; that if Brashear had acquired from the United States any title up to that time, it was an equitable title, resulting from the confirmation, and this equitable title was no stronger than the title then held by the

plaintiffs, the Court declaring (5th Martin N. S. 35) that
116 so far as the rights of both plaintiffs and defendant in that case, "may depend on any sanction from that source (the United States), stand with equal pretensions before the Court." This was a declaration that the respective inchoate titles of the parties before the Court were of equal strength, and that in favor of neither one of them was the fee of the United States divested, and though equally imperfect, one was no stronger than the other, the Court did not declare that the fee to the land had passed from the United States, but merely that the latter had relinquished in favor of both parties its title, meaning of course, the title of both under which each one claimed from the United States, namely, each one a confirmation from the United States, which we have seen did not deprive the latter of the legal title; until the land was surveyed and a patent issued, the fee was left in the United States; the plaintiffs have since obtained a survey of the land and a patent therefor, but neither Brashear nor any one of those holding under him have obtained such survey or patent; so therefore the equitable title of plaintiffs, which in the case of the 5th New Series was declared to be no better than Brashear's title, has now ripened into a legal title, evidenced by the patent, which is of higher dignity and greater strength than the equitable title of Brashear spoken of in the case in the 5th New Series.

That the Supreme Court of Louisiana considered that only the equitable, and not the legal title, of the United States had been divested in favor of either party, is shown by its declaration, page 35-36, that the United States when it took possession of the country, by requiring imperfect titles under former governments be presented for approval, "showed that they considered they required a confirmation and a patent to vest the title;" neither party then had a patent, although both had confirmations; hence, neither was vested with the full title of the United States, in which the fee remained.

No decision could be made by the Supreme Court of Louisiana, which would diminish or affect the title of the United States, especially where it subsequently assumed to convey such title by its patent, valid against the claim of United States.

Foley vs. Harrison, 5th La. 87.

A State Supreme Court has no jurisdiction to decree the validity or invalidity of an inchoate Spanish title, and its proceedings in that respect are void.

Hickey vs. Stewart, 3 H. 750.

State Courts have no jurisdiction as between two conflicting claimants under the United States, until a patent issues.

Vantongeren vs. Heffernen, 38 N. W. 60.

117 Whenever the question arises in any Court, State or Federal, whether a title to land which has once been the property of the United States is passed, the questions must be resolved by the laws of the United States, not by the laws of a state or by the decision of its Courts.

Wilcox vs. Jackson, 13 Peters 516.

3rd. That the Court erred in holding that Gonsoulin vs. Brashear, 5th N. S., was res adjudicata as concerns the title acquired by plaintiffs subsequent to that suit and decision, evidenced by the United States patent sued upon.

McLane vs. Bovee, 35 Wis. p. 27.

4th. That the title to public land commences with the issuance of the government's patent, and until then there can be no adverse possession as against the government, nor any which will prevail against the holder of a patent issued by the United States in by prescription.

Gibson vs. Choteau, 15 Wal. 92-103-104.
Shuffleton vs. Nelson, 22 Fed. Cases p. 45, case No. 12822.
Redfield vs. Parks, 132 U. S. 246-249.
Morrow vs. Whitney, 95 U. S. 557.
Langdau vs. Haynes, 21 U. S. 528.
Denny vs. Dodson, 32 Fed. Rep. 919.

5th. That all of the authors of defendant's asserted title from and including Walter Brashear, up and including Townsend Lawrence, hold not by any title translative of property, but by mere quit-claims, under which a party cannot be a possessor in good faith, nor acquire a title by the ten year prescription.

May vs. Leclair, 11 W. 232.
Villa vs. Rodrigues, 12 W. 339.
Dickson vs. Colegrove, 100 U. S. 95.
Guest vs. Packwood, 34 Fed. Rep. 372.
Runyan vs. Smith, 18 Fed. Rep. 532.
McClung vs. Steen, 37 Fed. Rep. 374.

It has been held by the Supreme Court of Louisiana that a quit-claim is not a just title translative of property, which will serve as a basis of the prescription of ten years.

Eastman vs. Beiler, 3 Rob. 220-223.
Thomas vs. Kean, 10 Rob. 88.
Avery vs. Allain, 11 Rob. 441.
Hughey vs. Barrow, 5 An. 252.

Also that where under an alleged title from the United States there has been no location of the land claimed, by the proper officers of the government, that such a title was not

translative of the property, and would not sustain a plea of prescription of ten years.

118 Bassaron vs. McRae, 9 An. 281.

Likewise as to a pre-emption right.

Milligan vs. Hargrove, 6 Martin N. S. 337.

Also as to a pre-emption certificate unaccompanied by any evidence of a compliance on the holder's part with the act of Congress.

Courtney vs. Perkins, 5 An. 517.

That although Townsend Lawrence in 1892 sold to R. S. Withers by deed undertaking to convey property, it appears in the testimony of Withers that he had full knowledge of the vices and defects in Brashear's title, notwithstanding which, he bought under the advice of counsel; being fully aware of the weakness and imperfect and incomplete condition of the title of Brashear, he could not have been a possessor in good faith, having full knowledge of the vices and defects of his vendor's title; the suit being brought in 1898, there could be no prescription of ten years, still less thirty years.

6th. That this being an action in ejectment, the Court erred in not holding that the legal title of plaintiffs, shown by the patent of the United States, should have prevailed.

Redfield vs. Parks, 132 U. S. 239.

Foster vs. Mora, 98 U. S. 427.

Steel vs. Smelting Co., 160 U. S. 450-451.

Gibson vs. Choteau, 13 Wal. 103-104.

Morrow vs. Whitney, 95 U. S. 577.

Perkins vs. Vincent, 47 La. An. 579; 12 La. An. 151; 33 La. An. 152.

Johnson vs. Christian, 138 U. S. 322.

There never has been any severance of the land from the public domain in favor of defendants, nor was there in favor of plaintiffs until the issuance of the government's patent in their favor in 1878.

Fahey vs. Anderson, 6 La. An. 681.

Langdeau vs. Haynes, 21 Wal. 528.

Stoneroad vs. Stoneroad, 158 U. S. 263.

West vs. Cochran, 17 How. 403.

Ledoux vs. Black, 5 La. An. 511; same case 18 How. 473. Lafayette vs. Blanc, 3rd An. 59; same case 11 How. 104.

Metoyer vs. Larenandiere, 6 Rob. 139.

Lott vs. Prodhomme, 3 Rob. 295.

Lefebvre vs. Comeaux, 11 An. 321.

Slack vs. Orillion, 11 La. 587.

7th. That the Court erred in holding that that the patent of plaintiffs was void under the authority of Doolan vs. Carr, 125 U. S. 618; that there was no want of power in the United States to issue the patent to plaintiffs, because the land
119 up to the issuance of said patent had not been surveyed or located under the confirmation thereof by the land commissioners in favor of defendants; that the confirmation of Brashear did not divest the title of the United States, because it was conditioned upon a survey of the land to be made subsequent to the commissioner's report; which survey was never made; that the confirmation of plaintiffs was followed by a survey, locating and designating the land covered by the confirmation, and the patent in favor of plaintiffs by which the fee of the government was conveyed to them; that there therefore remained in the government notwithstanding the confirmation to Brashear complete power to have surveyed, and issued a patent for, the land, as it did in favor of plaintiffs.

West vs. Cochran, 17 How. 415-416; 98 U. S. 213.
Willot vs. Sanford, 19 How. 79-82.
Cousin vs. Labatut, 19 How. 202.
Magwire vs. Tyler, 1 Black, 195-201-202.
Kissell vs. St. Louis Public Schools, 18 How. 21.

The confirmation to Brashear under the act of Congress of March 3rd, 1807, gave a title to a certain quantity of land, but to no specific tract, a survey to locate and identify which was necessary; no such survey having been made, and no patent issued, the government in 1878 had the power to make a survey and issue a patent in favor of plaintiffs.

Fahey vs. Anderson, 6 La. An. 681.
West vs. Cochran, 17 How. 403.
Langdeau vs. Haynes, 21 Wal. 528.
Stoneroad vs. Stoneroad, 115 U. S. 69.
Ledoux vs. Black, 18 How. 473.
Fafayette vs. Blans, 11 How. 104.

No character or length of possession by defendant until the government parted with its title, and the land became private property, could support a plea of prescription, which does not run against the United States.

Laidlow vs. Landry, 12 An. 151.
Gibson vs. Chouteau, 15 Wal. 92-103-104.
Shuffleton vs. Nelson, 22 Fed. Cases, 47.
Redfield vs. Parks, 132 U. S. 246-249.
Morrow vs. Whitney, 95 U. S. 557.

120 **Hearing and Submission of Rule and Grounds for New Trial.**

Extract from the Minutes—November Term, 1901.

New Orleans, Saturday, November 23rd, 1901.

Court met pursuant to adjournment:
Present: Hon. Charles Parlange, District Judge.

HEIRS OF GONSOULIN
vs. No. 12760.
THE GULF CO.

This cause came on to be heard upon the rule for a new trial herein filed by the plaintiffs:
B. K. Miller appearing for plaintiffs in rule;
Farrar, Jonas & Kruttschnitt for defendant;
And was argued by counsel and submitted—when the Court took time to consider.

Order Refusing a New Trial.

Extract from the Minutes—November Term, 1901.

New Orleans, Monday, December 9, 1901.

Court met pursuant to adjournment:
Present: Hon. Charles Parlange, District Judge.

HEIRS OF GONSOULIN
vs. No. 12760.
THE GULF CO.

The Court having heard arguments at a former day from the counsel for the respective parties upon the application of plaintiffs for a new trial in this cause, and having duly considered the same:
It is now ordered that the application be denied and a new trial herein be refused.

121 **Judgment.**

Extract from the Judgment Book—November Term, 1901.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, New Orleans Division.

New Orleans, Wednesday, November 13th, 1901.

Court met pursuant to adjournment:
Present: Hon. Charles Parlange, District Judge.

HEIRS OF GONSOULIN
vs. **No. 12760.**
THE GULF COMPANY.

By reason of the verdict of the jury this day herein rendered and in accordance therewith, it is ordered, adjudged and decreed that there be judgment in favor of the defendant, the Gulf Company, and against the plaintiffs. The Heirs of Gonsoulin, sustaining the plea of prescription pleaded by the defendant against the plaintiffs in bar of the plaintiffs' demand.

It is therefore further ordered, adjudged and decreed that the plaintiffs' demand against the defendant be rejected with costs to be taxed.

It is further ordered, adjudged and decreed that in accordance with the verdict of the jury, the plea of res adjudicata filed by the defendant be dismissed as in case of non-suit.

In view of the disclaimer of the defendants herein filed and in order to make it clear to what part of the land claimed by plaintiffs from the defendant, the plea of prescription herein maintained apply, it is ordered, adjudged and decreed that the said plea cover all of section 28, in township 17, south of range 10 east, and all that portion of section 19, in township No. 17 south, range No. 11 east, which lies west of Doctor's Bayou, said bayou being defined as the bayou appearing upon the official maps of said township running almost due north and south from Wax Bayou to Lake Belle Isle; and that the said pleas and the judgment thereon in favor of the defendant do not apply to all that part of section 19 of township 17 south, range 11 east, which lies east of the said Doctor's Bayou, the said east portion of the said section being the land title and possession to which is disclaimed by the defendant.

Judgment rendered November 13, 1901.
Judgment signed December 11, 1901.

(Signed) CHARLES PARLANGE, Judge.

122 **Motion For Writ of Error and Order Allowing Same.**

Filed Jany. 28th, 1902.

United States Circuit Court, Eastern District of Louisiana.

HEIRS OF GONSOULIN
vs. **No. 12760.**
THE GULF COMPANY.

Now come Fernand Bonin, Valcour Bonin, Ovignac Bonin, Amanthe Toffier widow, Mathilde Broussard widow, Edgar Bonin, Albert Bonin, Olympe Bonin wife of Joseph Dressel, and Joseph Dressel her husband, Azelie Bonin wife of Leon Pallud (or Pavy) and Leon Pallud (or Pavy) her husband, Arsene Bonin wife of Ulienor Dugas and Ulienor Dugas her husband, Corinne Breaux wife of Aurelian Breaux and Aurelian Breaux her husband, Despany Broussard father of Edward Despany, Jules Duperon, Pierre and Amelie Broussard, Nannie Bonin wife of Amadie Gerois and Amadie Gerois her husband, Arthur Gibson, Emily Gibson wife of Caesar DeBlanc, and Caesar DeBlanc her husband, Clemence Boutte widow of Leo Decou, Clelie Berard widow of Marshall Bonin, Alcee Boutte, Alphonse Boutte, Alphonsine Boutte wife of Oscar Gonsoulin and Oscar Gonsoulin her husband, Fernand Garret, John G. Boutte, Emily Boutte wife of Jules Etie and Jules Etie her husband, Walter Boutte, Arthur Boutte, Edgar Boutte, Paul Boutte by Ora Harry Boutte widow and natural tutrix of her said minor children Gaston Boutte, Sidney Boutte represented by their mother Widow Alcide Boutte, Laura Boutte wife of Policarp Borel and Policarp Borel her husband, Louise Boutte wife of Walter Harry and Walter Harry her husband, Louise Boutte, Nemours Megues, Emily Boutte wife of John Roland and John Roland her husband, Paul Boutte. Mary Boutte widow of P. D. Tatman, Frank Boutte, Joseph R. Boutte, Charles Boutte, Edmond Boutte, Oscar Boutte, May Boutte wife of George Sheard and George Sheard her husband, Alexander Boutte, Aristide Boutte, Laura Boutte wife of Similian Rodrigues and Similian Rodrigues her husband, Marie Bouzique, Frank Boutte, William Boutte, Henry Boutte, Hardy Boutte, Cora Boutte wife of M. L. Keller and M. L. Keller her husband, Blanche Boutte wife of Garcia Romero and Garcia Romero her husband, Marie Boutte wife of Charles Espinar and Charles Espinar her husband, T. Frere Herbert and Tontant Herbert by their father and natural tutor
123 Ovide Herbert, Paul Boutte, Ada Boutte, Marie Boutte, represented by their mother and natural tutrix Zoe Robi-

chaux Boutte, Olympe Boutte wife of August Delpit and August Delpit her husband, Blanche Boutte wife of Charles Delpit and Charles Delpit her husband, Clara Boutte wife of Charles Durant and Charles Durant her husband, Albert Boutte, Edward Boutte, Celina Boutte wife of H. Girois and H. Girois her husband, Edward Boutte, Celina Boutte wife of A. Romero and A. Romero her husband, Elizabeth Coralie Boutte wife of Clerville T. Patin and Clerville T. Patin her husband, Angel Castello widow of Bulliard, Mathilda Castello wife of Emile Landry and Emile Landry her husband, George Greigg, Louis Greigg, Agelice Greigg wife of H. Clair Dugas and H. Clair Dugas her husband, Henry Greigg, George Greigg, Adeline Greigg, Etta Greigg, Agatha Greigg, Mary Himel, Rosa Himel wife of M. D. Dalferes and M. D. Dalferes her husband, Corinne Himel, Olympe Himel, Rosa Greigg DeBlanc widow of Ralph DeBlanc, John Greigg, Carlos Greigg, Mathilda Castello wife of Emile Landry and Emile Landry her husband, Angel Castello widow of August Baillard, Euphemie Gonsoulin wife of Gaston Gerois and Gaston Gerois her husband, Eugenie Gonsoulin wife of Edmond Gonsoulin and Edmond Gonsoulin her husband, Joseph Gonsoulin, Numa Gonsoulin, Celemar Gonsoulin wife of Erward Nero and Edward Nero her husband, Oscar Gonsoulin, Dupre Gonsoulin, Louise Gonsoulin wife of Albert Levert and of Albert Levert her husband, Sidney Gonsoulin, Mathilde Gonsoulin wife of Sosthene Breaux and Sosthene Breaux her husband, Dorsienne Gonsoulin wife of Jules Grivat and Jules Grivat her husband, Charles Fontelieu, Albert Fontelieu, Polain Fontelieu, Annette Fontelieu, Natalie Gonsoulin wife of Euselie Zeleu and Euselie Zeleu her husband, Erzelie Gonsoulin widow of Octave Boutte, Marie Gonsoulin wife of Selomer Solomon and Selomer Solomon her husband, Joe Gonsoulin, Leocadie Gonsoulin wife of John Broussard and John Broussard her husband, Alcied Gonsoulin, Adrien Gonsoulin, St. Clair Dugas, Alide Dugas wife of Eugene Verret and her said husband Eugene Verret, Herzelie Gonsoulin wife of H. Maurice Provost and the said H. Maurice Provost her husband, Anatole Gonsoulin, Fernand Gonsoulin, Eva Gonsoulin wife of Damas Moresi and Damas Moresi her husband, Alfred Gonsoulin, Jr., Sidney Gonsoulin, Corinne Gonsoulin, the last three minors represented by their natural tutrix Suzette Gonsoulin, Eva Labau represented herein by her father and natural tutor George Labau, Arminthe Gonsoulin widow of Dauterive Toffier, Mathilde Gonsoulin widow of Telesphore Broussard
124 and her said husband Telesphore Broussard, Edgar Bonin, Albert Bonin, Olympe Bonin wife of Joseph Dressel and her said husband Joseph Dressel, Herzalie Bonin wife of Leon Pallud and the said Leon Pallud her husband, Arsene

Bonin wife of Ulienor Dugas and Ulienor Dugas her husband, Corinne Bonin wife of Aurelian Breaux and the said Aurelian Breaux her husband, Mamie Bonin wife of Amadie Gerois and Amadie Gerois her husband, Olivia Bonin wife of Despany Broussard and the said Despany Broussard her husband, Fernand Bonin, Ovignac Bonin, Valcour Bonin, Desire Gonsoulin, Edwin Dugas, Edmond Dugas, Edward Dugas, Leonce Dugas, Marie Louise Dugas wife of Henry Lee Dugas and the said Henry Lee Dugas her husband, Homer Gonsoulin, Euselie Gonsoulin, Luzin Gonsoulin, Robert F. Broussard, Albert Broussard, Louis Broussard, Edwin Broussard, Blanche Broussard wife of Prestin Guilbeau and the said Prestin Guilbeau her husband, Marie Broussard wife of Richard Steckler and the said Richard Steckler her husband, Celina Gonsoulin wife of Valiere Dauterive and the said Valiere Dauterive her husband, Joe Gonsoulin, Leocadie Gonsoulin wife of John Broussard and the said John Broussard her husband, Marie Gonsoulin wife of Fernand Solomon and the said Fernand Solomon her husband, Helena Gonsoulin wife of Victor Labauve and the said Voctor LeBauve her husband, plaintiffs in the above numbered and entitled cause.

And on suggesting that there has been error to the prejudice of plaintiffs in the final judgment rendered herein by the Court in favor of the defendant on the 13th day of November, 1901, as will more in detail appear from the assignments of error which are filed with this motion, move the Court to allow them, plaintiffs, to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals for the Fifth Circuit, under and in accordance with the laws of the United States in that behalf made and provided; and also that an order be made, fixing the amount of the security which they, the said plaintiffs shall give and furnish upon said writ of error.

Order.

Let the foregoing motion for a writ of error be granted, and let the plaintiffs named in said motion be allowed a writ of error to the United States Circuit Court of Appeals for the Fifth Circuit returnable within 30 days from date hereof, upon said plaintiffs furnishing bond in the sum of five hundred dollars, conditioned as the law directs.

New Orleans, La., January 28th, 1902.

(Signed) CHARLES PARLANGE, U. S. Judge.

125 **Assignment of Errors.**

Filed January 28, 1902.

United States Circuit Court, Eastern District of Louisiana.

HEIRS OF GONSOULIN
vs. **No. 12760.**
THE GULF COMPANY.

Assignment of Errors.

Plaintiffs in this action, in connection with its motion for a writ of error, in the above entitled and numbered cause, makes the following assignment of errors, which they aver occurred upon the trial of this cause, to-wit:

1st. That the Court erred in holding that there was any divestiture of the title of the United States in favor of Walter Brashear or Samuel Watson by the confirmation obtained by the latter from the Board of Land Commissioners; that the said confirmation was made under the authority of the Act of March 3rd. 1807, Second Statutes at Large, page 440; that the procedure in case of the final decision of the Board of Commissioners in favor of the claimant authorized by section 4 did not become conclusive or effective until a copy of the said confirmation being filed in the Land Office, and survey and plat of the land designated in the confirmation made by the Surveyor General or the other officer acting as such, when and after which, the claimant was entitled to obtain from the Land Office a certificate of confirmation, and its registry, which upon presentation to the Secretary of the Treasury (or Interior) entitled the party to a patent; that the confirmation by the commissioners was by the said act made to depend for its effect, and was conditioned upon a subsequent survey of the land under the authority of the United States, and until such survey was made, subsequent to the confirmation, and the filing thereof in the Land Office, the confirmation was simply an inchoate title to an unlocated tract of land, and applying to no particular tract, until a survey of same was made, designating and identifying the land thereby covered, the title of the land, the subject of the confirmation, remained in the United States. That Act of 1807 intended that the Commissioners should adjudge the existence of good titles to lands held under French or Spanish possessors, but not intend that a final or legal title as against the United States should be made until their bounds had been ascertained, and the particular tract defined by survey.

126 2nd. That the Court erred in holding that the dictum found in the opinion of the Supreme Court of Louisiana, in the case of Gonsoulin vs. Brashear, 5th Martin, new series (Louisiana), page 35: "The government of the United States have relinquished their title to both," (plaintiffs and defendants), was conclusive to the effect that Brashear had at the date of that suit acquired the legal title of the United States.

3rd. That the Court erred in holding that Gonsoulin vs. Brashear, 5th Martin, new series, was res judicata, as concerns the title acquired by plaintiffs subsequent to that suit and decision, evidence by the United States patent sued upon.

4th. That the United States did not part with its title to the land sued for herein until the issuance of its patent to plaintiffs' ancestors in 1878; that there had been no prior severance of the said land or property from the public domain.

That the Court erred in holding that the title of the United States to this land or property was divested in favor of any private person prior to the issuance of its patent; or that the same had been severed from the public domain of the United States at any time prior to the issuance of the said patent.

5th. That the Court erred in holding that the defendant or any of the authors of its title had held or enjoyed such possession of said land or property as is or would be sufficient to support or acquire a title to the same under the Civil Code of Louisiana, by prescription or adverse possession.

That the only claim by right under which said property was ever at any time held, by any of the persons upon whose supposed title or possession the defendant relies, was to such right, title and interest as may have been had in said property by the vendor or author from whom the several parties in question purchased; that a party holding under such a title does not possess as owner, and that hence his possession is not sufficient to operate a title by prescription however long may be its duration, and that the Court erred in not so holding.

6th. That under the whole of the evidence and testimony offered and introduced on the trial of the cause, defendant could not maintain its claim to a title by the prescription of ten years, established by the Civil Code of Louisiana.

7th. That the Court erred in holding that there had been at any time prior to 1878, any survey by the proper officers of the United States of the claim confirmed to Francois Gonsoulin, Dauterive Dubuclet or Benoist De St. Clair, which had the effect of separating the land or property covered by said claim or confirmation, from the public domain, and making it private property.

127 8th. That the Court erred that there ever was any confirmation by the United Sates of any claim or title in

favor of Samuel Watson or of Walter Brashear to the land or property which is sued for herein, or of any part thereof; and the Court also erred in holding that the fee of, or title to the said property, at any time had ever passed from the United States to the said Samuel Watson or to the said Walter Brashear.

9th. That the Court erred in holding that there had ever been at any time any survey or other location or confirmation by the United States of the said land or property or any portion thereof, in favor of either the said Watson or the said Brashear or that the claim of the said Watson or the said Brashear relied upon by defendant herein, was ever located or identified by limits, boundaries or otherwise, by any lawful and sufficient authority of the United States.

9th. That the Court erred in holding that there was any divestiture of the title of the United States to the land or property sued for herein, at any date prior to the issuance by the United States of its patent in favor of Francois Gonsoulin, Benoist De St. Clair and Dauterive Dubuclet, in the year 1878, in favor of any person whatsoever.

10th. That the Court erred in any event in maintaining a title in defendants to any quantity of the property or lands sued for herein in excess of three hundred and seventy-one arpents, this being the utmost quantity of land which in any event would be comprehended in any confirmation made by the United States of the title or claim of Samuel Watson or Walter Brashear, or of which there was any adverse possession sufficient to support the pleas of prescription made.

11th. That the Court in any event should have instructed the jury to find herein a verdict for plaintiffs on the ground, if on no other, that the title of plaintiffs being a patent of the United States, should have prevailed over any and all other titles purporting to be derived from the United States; and the Court erred in not so instructing the jury.

12th. That the Court erred in holding that at the time of the issuance of the patent herein to Francois Gonsoulin, Dauterive Dubuclet and Benoist De St. Clair, on the 13th day of ..... 1878, the United States was without power to issue said patent, that the Court should have held that the legal title to said property or land was and remained in the United States up to and until the issuance of its said patent, and by the latter it conveyed the legal title to said land or property to the parties named therein and their lawful heirs.

128 13th. That the Court erred in holding that there was any adverse possession of the said land or property in any of the so-called authors of defendant's asserted title, prior to the issuance of the said patent of the United States; that the

Court should have held that any possession of the said land or property prior to the issuance of the said patent cannot be the basis of any rights in favor of this defendant, but constituted a tresspass; that the Court also ered in holding that there was possession for a sufficient length of time, either by defendant or any or all of the authors of its pretended title, sufficient to acquire said land by prescription, under the Civil Code of Louisiana, or to support any action by plaintiffs for the recovery of said land or property.

14th. That the Court erred in holding that there had been or was held by the defendant or any of the authors of its title, any possession sufficient in character and extent, or any part of the land sued for herein.

Wherefore, plaintiffs in error pray that the judgment herein of the Circuit Court of the United States, for the Eastern District of Louisiana, be reversed, and such direction be given that full force and efficacy may inure to plaintiffs by reason of the claim, demand and cause of action set up in their petition filed in this case; that the judgment of the said Circuit Court of the United States, for the Eastern District of Louisiana, be reversed and that the said Court be directed to grant a new trial of this cause.

(Signed) DAVID TODD,
BRANCH K. MILLER,
Attorneys for Fernand Bonin and Others, Plaintiffs in the Circuit Court and Plaintiffs in Error in the Circuit Court of Appeals.

129 Bond For Writ of Error.

Filed Jany. 28, 1902.

United States Circuit Court, Eastern District of Louisiana.

HEIRS OF GONSOULIN
vs. No. 12760.
THE GULF COMPANY.

Know all men by these presents, that we, Fernand Bonin, Valcour Bonin, Ovignac Bonin, Amanthe Toffier, widow, Mathilde Broussard, widow, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel and Joseph Dressel her husband. Azelie (or Herzalie) Bonin wife of Leon Pallud (or Pavy) and Leon Pallu (or Pavy) her husband, Arsene Bonin wife of Ulienor Dugas and Ulienor Dugas her husband, Corinne Breaux wife of Aurelian Breaux and Aurelian Breaux her husband, Despany Broussard father of Edward Despany, Jules Duperon,

Pierre and Amelie Broussard, Nannie Bonin wife of Amadie Gerois and Amadie Gerois her husband, Arthur Gibson, Emily Gibson wife of Caesar De Blanc and Caesar De Blanc her husband, Clemence Boutte widow of Leo Decou and of Leo Decou her husband, Clelie Berard widow of Marshall Bonin, Alcee Boutte, Alphonse Boutte, Alphonsine Boutte wife of Oscar Gonsoulin and Oscar Gonsoulin her husband, Fernand Garret, John G. Boutte, Emily Boutte wife of John Langlois and John Langlois her husband, Corrinne Boutte wife of Jules Etie and Jules Etie her husband, Walter Boutte, Arthur Boutte, Edgar Boutte, Paul Boutte by their natural tutrix Ora Harry Boutte widow and natural tutrix of her said minor children, Gascon Boutte, Sidney Boutte represented by their mother Widow Alcide Boutte, Laura Boutte wife of Policarp Borel and Policarp Borel her husband, Louise Boutte wife of Walter Harry and Walter Harry her husband, Louise Boutte, Nemours Megues, Emily Boutte wife of John Roland and John Roland her husband, Paul Boutte, Mary Boutte, widow of P. D. Tatman, Frank Boutte, Joseph R. Boutte, Charles Boutte, Edmond Boutte, Oscar Boutte, May Boutte wife of George Sheard and George Sheard her husband, Alexander Boutte, Aristide Boutte, Laura Boutte wife of Similian Rodrigues and Similian Rodriguez her husband, Marie Bouzique, Frank Boutte, William Boutte, Henry Boutte, Hardy Boutte, Cora Boutte wife of M. L. Keller and M. L. Keller her husband, Blanche Boutte, Blanche Boutte wife of Garcia Romero and Garcia Romero her husband, Marie Boutte wife of Charles Espinar and
130 Charles Espinar her husband, T. Frere Herbert and Tontant Herbert by their father and natural tutor Ovide Herbert, Paul Boutte, Ada Boutte, Marie Boutte represented by their mother and natural tutrix Zoe Ribichaux Boutte, Olympe Boutte wife of August Delpit and August Delpit her husband, Blanche Boutte wife of Charles Delpit and Charles Delpit her husband, Clara Boutte wife of Charles Durant and Charles Durant her husband, Albert Boutte, Edward Boutte, Celina Boutte wife of H. Gerois and H. Gerois her husband, Edward Boutte, Celina Boutte wife of Clerville T. Patin and Clerville T. Patin her husband, Angel Castello widow of Bulliard, Mathilde Castello wife of Emile Landry and Emile Landry her husband, George Greigg, Louis Greigg, Angelice Greigg wife of H. Clair Dugas and her husband H. Clair Dugas, Henry Greigg, George Greigg, Adeline Greigg, Etta Greigg, Agatha Greigg, Mary Himel, Rosa Himel wife of M. D. Dalferes and M. D. Dalferes her husband, Corrine Himel, Olympe Himel, Rosa Greigg DeBlanc widow of Ralph DeBlanc, John Greigg, Carlos Greigg, Mathilde Castello wife of Emile Landry and Emile Landry her husband, Angel Castello widow

of August Baillard, Euphemie Gonsoulin wife of Gaston Gerois and Gaston Gerois her husband, Eugenie Gonsoulin wife of Edmond Gonsoulin, Numa and Edmond Gonsoulin her husband, Joseph Gonsoulin, Numa Gonsoulin, Celemar Gonsoulin wife of Edward Nero and Edward Nero her husband, Oscar Gonsoulin, Dupre Gonsoulin, Louise Gonsoulin wife of Albert Levert and Albert Levert her husband, Sidney Gonsoulin, Mathilde Gonsoulin wife of Sosthene Breaux and Sosthene Breaux her husband, Dorsienne Gonsoulin wife of Jules Grivat and Jules Grivat her husband, Charles Fontelieu, Albert Fontelieu, Paulin (or Polain) Fontelieu, Annette Fontelieu, Natalie Gonsoulin wife of Euselie Zeleu and Euseleu Zeleu her husband, Erzelie Gonsoulin widow of Octave Boutte, Marie Gonsoulin wife of Selomer Solomon and Selomer Solomon her husband, Joe Gonsoulin, Leocadie Gonsoulin wife of John Broussard and John Broussard her husband, Alcide Gonsoulin, Adrien Gonsoulin, St. Clair Dugas, Alida Dugas wife of Eugene Verret and her said husband Eugene Verret, Herzalie Gonsoulin wife of H. Maurice Provost and the said H. Maurice Provost her husband, Anatole Gonsoulin, Fernand Gonsoulin, Eva Gonsoulin wife of Damas Moresi and Damas Moresi her husband, Alfred Gonsoulin, Jr., Sidney Gonsoulin, Corinne Gonsoulin, the last three minors represented by their natural tutrix Suzette Gonsoulin, Eva Labau represented
131 herein by her father and natural tutor George Labau, Arminthe Gonsoulin widow of Dauterive Toffier, Mathilde Gonsoulin wife of Telesphore Broussard, Edgar Bonin, Albert Bonin, Olympe Bonin wife of Joe Dressel and her said husband Joe Dressel, Herzalie Bonin wife of Leon Pallud and the said Leon Pallud her husband, Arsene Bonin wife of Ulienor Dugas and the said Ulienor Dugas her husband, Corinne Bonin wife of Aurelian Breaux and the said Aurelian Breaux her husband, Mamie Bonin wife of Amade Gerois and Amade Gerois her husband, Olivia Bonin wife of Despany Broussard and the said Despany Broussard her husband, Fernand Bonin, Ovignac Bonin, Valcour Bonin, Desire Gonsoulin, Edwin Dugas, Edmond Dugas, Edward Dugas, Leonce Dugas, Marie Louise Dugas wife of Henry Lee Dugas and Henry Lee Dugas her husband, Homer Gonsoulin, Euselie Gonsoulin, Luzin Gonsoulin, Robert F. Broussard, Albert Broussard Louis Broussard, Edwin Broussard, Blanche Broussard wife of Prestin Guilbeau and the said Prestin Guilbeau her husband, Marie Broussard wife of Richard Steckler and the said Richard Steckler her husband, Celina Gonsoulin wife of Valiere Dauterive and the said Valiere Dauterive her husband, Joe Gonsoulin, Leocadie Gonsoulin wife of John Broussard and the said John Broussard her husband, Marie Gonsoulin wife of Fernand Solomon and Fer-

nand Solomon her husband, Helena Gonsoulin wife of Victor Lebauve and the said Victor Lebauve her husband, herein acting and appearing by their attorney, Branch K. Miller, as principal, and William Adler, as sureties, are held and firmly bound unto The Gulf Company, the defendant in error herein, in the full and just sum of five hundred dollars, to be paid to the said Gulf Company above named, certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this.....day of January in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a session of the United States Circuit Court, Fifth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between the said Fernand Bonin and other obligees and plaintiffs in error named and the Gulf Company, a judgment was rendered against the said Fernand Bonin and the other obligees above named, and the said Fernand Bonin and other obligees above named, having obtained wrir [writ] of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed
132 to the said Gulf Company, citing and admonishing it to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Fernand Bonin and the other obligees above named shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

FERNAND BONIN,
And the Others Above Named, by their Attorney:
(Signed) BRANCH K. MILLER, [Seal]
" WM. ADLER, [Seal]

Sealed and delivered in presence of:
Approved by:
(Signed) CHARLES PARLANGE, U. S. Judge.

United States of America,
Eastern District of Louisiana, ss.

Personally appeared William Adler, who being duly sworn, deposes and says that he is the surety on the within bond, that he resides in New Orleans, Louisiana, and is worth the full sum

of five hundred dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) WM. ADLER.

Subscribed and sworn before me this 22 day of January, 1902.

(Signed) H. J. CARTER,

[Seal] U. S. Commissioner, Eastern District of La.

[Indorsed:] U. S. Circuit Court, Eastern District of Louisiana. No. 12760. Heirs of Gonsoulin vs. Gulf Co. Bond.

United States of America, ss.

The President of the United States:

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Louisiana—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Fernand Bonin, Valcour Bonin, Ovignac Bonin, Amanthe Tof-
133 fier widow, Mathilde Broussard widow, Edgar Bonin, Albert Bonin, Olympe Bonin wife of Joseph Dressel and Joseph Dressel her husband, Azelie (or Erzalie) Bonin wife of Leon Pallud (or Pavy) and Leon Pallud (or Pavy) her husband, Arsene Bonin wife of Ulienor Dugas and Ulienor Dugas her husband, Corinne Breaux wife of Aurelien Breaux and Aurelien Breaux her husband, Despany Broussard father of Edward Despany, Jules Duperon, Pierre and Amelie Broussard, Nannie Bonin wife of Amadie Gerois and Amadie Gerois her husband, Arthur Gibson, Emily Gibson wife of Caesar DeBlanc and Caesar DeBlanc her husband, Clemence Boutte widow of Leo Decou and of Leo Lecou her husband, Clelie Berard widow of Marshall Bonin, Alcee Boutte, Alphonse Boutte, Alphonsine Boutte wife of Oscar Gonsoulin and Oscar Gonsoulin her husband, Fernand Garret, John G. Boutte, Emily Boutte wife of John Langlois and John Langlois her husband, Corinne Boutte wife of Jules Etie and Jules Etie her husband, Walter Boutte, Arthur Boutte, Edgar Boutte, Paul Boutte, by their natural tutrix Ora Harry Boutte widow and natural tutrix of her said minor children, Gaston Boutte, Sidney Boutte represented by their mother Widow Alcide Boutte, Laura Boutte wife of Policarp Borel and Policarp Borel her husband, Louise Boutte wife of Walter Harry and Walter Harry her husband, Louise Boutte, Nemours Megues, Emily Boutte wife of John Roland and John Roland her husband, Paul Boutte, Mary Boutte widow of P. D. Tatman, Frank Boutte, Joseph R.

Boutte, Charles Boutte, Edmond Boutte, Oscar Boutte, May Boutte wife of George Sheard and George Sheard her husband, Alexander Boutte, Aristide Boutte, Laura Boutte wife of Similian Rodrigues and Similian Rodrigues her husband, Marie Bouzique, Frank Boutte, William Boutte, Henry Boutte, Hardy Boutte, Cora Boutte wife of M. L. Keller and M. L. Keller her husband, Blanche Boutte, Blanche Boutte wife of Garcia Romero and Garcia Romero her husband, Marie Boutte wife of Charles Espinar and Charles Espinar her husband, T. Frere Herbert and Tontant Herbert by their father and natural tutor Ovide Herbert, Paul Boutte, Ada Boutte, Marie Boutte represented by their mother and natural tutrix Zoe Robichaux Boutte, Olympe Boutte wife of August Delpit and August Delpit her husband, Blanche Boutte wife of Charles Delpit and Charles Delpit her husband, Clara Boutte wife of Charles Durant and Charles Durant her husband, Albert Boutte, Edward Boutte, Celina Boutte wife of H. Gerois and H. Gerois her husband, Edward Boutte, Celina Boutte wife of A. Domero and A. Romero her husband, Elizabeth Coralie
134 Boutte, wife of Clerville T. Patin and Clerville T. Patin her husband, Angel Castello widow of Buillard, Mathilde Castello wife of Emile Landry and Emile Landry her husband, George Greigg, Louis Greigg, Agelice Greigg wife of H. Clair Dugas and her husband H. Clair Dugas, Henry Greigg, George Greigg, Adeline Greigg, Etta Greigg, Agatha Greigg, Mary Himel, Rosa Himel wife of M. D. Dalferes and M. D. Dalferes her husband, Corinne Himel, Olympe Himel, Rosa Greigg DeBlanc widow of Ralph DeBlanc, John Greigg, Carlos Greigg, Mathilde Castello wife of Emile Landry and Emile Landry her husband, Angel Castello widow of August Baillard, Euphemie Gonsouline wife of Gaston Gerois and Gaston Gerois her husband, Eugenie Gonsoulin wife of Edmond Gonsoulin and Edmond Gonsoulin her husband, Joseph Gonsoulin, Numa Gonsoulin, Celemar Gonsoulin wife of Edward Nero and Edward Nero her husband, Oscar Gonsoulin, Dupre Gonsoulin, Louise Gonsoulin wife of Albert Levert and Albert Levert her husband, Sidney Gonsoulin, Mathilde Gonsoulin wife of Sosthene Breaux and Sosthene Breaux her husband, Dorsienne Gonsoulin wife of Jules Grivat and Jules Grivat her husband, Charles Fontelieu, Albert Fontelieu, Pauline (or Polain) Fontelieu, Annette Fontelieu, Natalie Gonsoulin wife of Euselie Zeleu and Euselie Zeleu her husband, Erzelie Gonsoulin widow of Octave Boutte, Marie Gonsoulin wife of Selomer Solomon and Selomer Solomon her husband, Joe Gonsoulin, Leocadie Gonsoulin wife of John Broussard and John Broussard her husband, Alcide Gonsoulin, Adrien Gonsoulin, St. Clair Dugas, Alida Dugas wife of Eugene Verret and her said husband

Eugene Verret, Herzalie Gonsoulin wife of H. Maurice Provost and the said H. Maurice Provost her husband, Anatole Gonsoulin, Fernand Gonsoulin, Eva Gonsoulin wife of Damas Moresi and Damas Moresi her husband, Alfred Gonsoulin, Jr., Sidney Gonsoulin, Corinne Gonsoulin, the last three minors represented by their natural tutrix Suzette Gonsoulin, Eva Labau represented herein by her father and natural tutor George Labau, Arminthe Bienvenue widow of Dauterive Toffier, Mathilde Bienvenue wife of Telesphore Broussard and Telesphore Broussard her husband, Edgar Bonin, Albert Bonin, Olympe Bonin wife of Joe Dressel and her said husband Joe Dressel, Herzalie Bonin, wife of Leon Pallud and the said Leon Pallud her husband, Arsene Bonin wife of Ulienor Dugas and the said Ulienor Dugas her husband, Corinne Bonin wife of Aurelian Breaux and the said Aurelian Breaux her husband, Mamie Bonin wife of Amadie Gerois and Amadie Gerois her husband, Alivia Bonin wife of Despany Broussard and the said Despany Broussard her husband,
135 Fernand Bonin, Ovignac Bonin, Valcour Bonin, Desire Gonsoulin, Edwin Dugas, Edmond Dugas, Edward Dugas Leonce Dugas, Marie Louise Dugas wife of Henry Lee Dugas and Henry Lee Dugas her husband, Homer Gonsoulin, Euselie Gonsoulin, Luzin Gonsoulin, Robert F. Broussord, Albert Broussard, Louis Broussard, Edwin Broussard, Blanche Broussard wife of Prestin Guilbeau and the said Prestin Guilbeau her husband, Marie Broussard wife of Richard Steckler and the said Richard Steckler her husband, Celina Gonsoulin wife of Valiere Dauterive and the said Valiere Dauterive her husband, Joe Gonsoulin, Leocadie Gonsoulin wife of John Broussard and the said John Broussard her husband, Marie Gonsoulin wife of Fernand Solomon and Fernand Solomon her husband, Helena Gonsoulin wife of Victor Lebauve and the said Victor Lebauve her husband, plaintiffs in the Circuit Court and plaintiffs in error in the Circuit Court of Appeals and the Gulf Company, defendants in the Circuit Court and defendants in error in the Circuit Court of Appeals, a manifest error hath happened, to the great damage of the said Fernand Bonin, Valcour Bonin and others above named, plaintiffs in the Circuit Court and plaintiffs in error in the Circuit Court of Appeals, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Fifth Circuit, together with this writ, so that you have the

same at New Orleans, Louisiana, within 30 days from the date hereof, in the said United States Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28 day of January in the year of our Lord one thousand nine hundred and two.

H. J. CARTER,
[Seal] Clerk of the U. S. Circuit Court, Eastern District of Louisiana.

Allowed by: CHARLES PARLANGE, U. S. Judge.

136 [Indorsed:] No. 12760. Heirs of Gonsoulin vs. Gulf Company. Writ of error. No. .... U.S. Circuit Court, Eastern District of Louisiana, New Orleans Division. Filed Jan. 28, 1902. H. J. Carter, Clerk.

The United States of America.

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States:

To the Gulf Company—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fifth Circuit, to be holden at the City of New Orleans, within 30 days from date hereof, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein Fernand Bonin, Valcour Bonin, Ovignac Bonin, Amanthe Toffier widow, Mathilde Broussard widow, Edgar Bonin, Albert Bonin, Olympe Bonin wife of Joseph Dressel and Joseph Dressel her husband, Azelie (or Erzalie) Bonin wife of Leon Pallud (or Pavy) and Leon Pallud (or Pavy) her husband, Arsene Bonin wife of Ulienor Dugas and Ulienor Dugas her husband, Corinne Breaux wife of Aurelien Breaux and Aurelien Breaux her husband, Despany Broussard father of Edward Despany, Jules Duperon, Pierre and Amelie Broussard, Nannie Bonin wife of Amadie Gerois and Amadie Gerois her husband, Arthur Gibson, Emily Gibson wife of Caesar DeBlanc and Caesar DeBlanc her husband, Clemence Boutte widow of Leo Decou

and of Leo Lecou her husband, Clelie Berard widow of Marshall Bonin, Alcee Boutte, Alphonse Boutte, Alphonsine Boutte wife of Oscar Gonsoulin and Oscar Gonsoulin her husband, Fernand Garret, John G. Boutte, Emily Boutte wife of John Langlois and John Langlois her husband, Corinne Boutte wife of Jules Etie and Jules Etie her husband, Walter Boutte, Arthur Boutte, Edgar Boutte, Paul Boutte by their natural tutrix Ora Harry Boutte widow and natural tutrix of her said minor children, Gaston Boutte, Sidney Boutte represented by their mother Widow Alcide Boutte, Laura Boutte wife of Policarp Borel and Policarp Borel her husband, Louise Boutte wife of Walter Harry and Walter Harry her husband, Louise Boutte,
137 Nemours Megues, Emily Boutte wife of John Roland and John Roland her husband, Paul Boutte, Mary Boutte widow of P. D. Tatman, Frank Boutte, Joseph R. Boutte, Charles Boutte, Edmond Boutte, Oscar Boutte, May Boutte wife of George Sheard and George Sheard her husband, Alexander Boutte, Aristide Boutte, Laura Boutte wife of Similian Rodrigues and Similian Rodrigues her husband, Marie Bouzique, Frank Boutte, William Boutte, Henry Boutte, Hardy Boutte, Cora Boutte wife of M. L. Keller and M. L. Keller her husband, Blanche Boutte, Blanche Boutte wife of Garcia Romero and Garcia Romero her husband, Marie Boutte wife of Charles Espinar and Charles Espinar her husband, T. Frere Herbert and Tontant Herbert by their father and natural tutor Ovide Herbert, Paul Boutte, Ada Boutte, Marie Boutte represented by their mother and natural tutrix Zoe Robichaux Boutte, Olympe Boutte wife of August Delpit and August Delpit her husband, Blanche Boutte wife of Charles Delpit and Charles Delpit her husband, Clara Boutte wife of Charles Durant and Charles Durant her husband, Albert Boutte, Edward Boutte, Celina Boutte wife of H. Gerois and H. Gerois her husband, Edward Boutte, Celina Boutte wife of A. Romero and A. Romero her husband, Elizabeth Coralie Boutte wife of Clerville T. Patin and Clerville T. Patin her husband, Angel Castello widow of Buillard, Mathilde Castello wife of Emile Landry and Emile Landry her husband, George Greigg, Louis Greigg, Agelice Greigg wife of H. Clair Dugas and her husband H. Clair Dugas, Henry Greigg, George Greigg, Adeline Greigg, Etta Greigg, Agatha Greigg, Mary Himel, Rosa Himel wife of M. D. Dalferes and M. D. Dalferes her husband, Corinne Himel, Olympe Himel, Rosa Greigg De Blanc widow of Ralph DeBlanc, John Greigg, Carlos Greigg, Mathilde Castello wife of Emile Landry and Emile Landry her husband, Angel Castello widow of August Baillard, Euphemie Gonsouline wife of Gaston Gerois and Gaston Gerois her husband, Eugenie Gonsoulin wife of Edmond Gonsoulin and Edmond Gonsoulin her husband,

Joseph Gonsoulin, Numa Gonsoulin, Celemar Gonsoulin wife of Edward Nero and Edward Nero her husband, Oscar Gonsoulin, Dupre Gonsoulin, Louise Gonsoulin wife of Albert Levert and Albert Levert her husband, Sidney Gonsoulin, Mathilde Gonsoulin wife of Sosthene Breaux and Sosthene Breaux her husband, Dorsienne Gonsoulin wife of Jules Grivat and Jules Grivat her husband, Charles Fontelieu, Albert Fontelieu, Pauline (or Polain) Fontelieu, Annette Fontelieu, Natalie Gonsoulin wife of Euselie Zeleu and Euselie Zeleu her husband, Erzelie Gonsoulin widow of Octave Boutte, Marie Gonsoulin
138 wife of Selomer Solomon and Selomer Solomon her husband, Joe Gonsoulin, Leocadie Gonsoulin wife of John Broussard and John Broussard her husband, Alcide Gonsoulin, Adrien Gonsoulin, St. Clair Dugas, Alida Dugas wife of Eugene Verret and her said husband Eugene Verret, Herzalie Gonsoulin wife of H. Maurice Provost and the said H. Maurice Provost her husband, Anatole Gonsoulin, Fernand Gonsoulin, Eva Gonsoulin wife of Damas Moresi and Damas Moresi her husband, Alfred Gonsoulin, Jr., Sidney Gonsoulin, Corinne Gonsoulin, the last three minors represented by their natural tutrix Suzette Gonsoulin, Eva Labau represented herein by her father and natural tutor George Labau, Arminthe Bienvenue widow of Dauterive Toffier, Mathilde Bienvenue wife of Telesphore Broussard and Telesphore Broussard her husband, Edgar Bonin, Albert Bonin, Olympe Bonin wife of Joe Dressel and her said husband Joe Dressel, Herzalie Bonin, wife of Leon Pallud and the said Leon Pallud her husband, Arsene Bonin wife of Ulienor Dugas and the said Ulienor Dugas her husband, Corinne Bonin wife of Aurelian Breaux and the said Aurelian Breaux her husband, Mamie Bonin wife of Amadie Gerois and Amadie Gerois her husband, Olivia Bonin wife of Despany Broussard and the said Despany Broussard her husband Fernand Bonin, Ovignac Bonin, Valcour Bonin, Desire Gonsoulin, Edwin Dugas, Edmond Dugas, Edward Dugas, Leonce Dugas, Marie Louise Dugas wife of Henry Lee Dugas and Henry Lee Dugas her husband, Homer Gonsoulin, Euselie Gonsoulin, Luzin Gonsoulin, Robert F. Broussord, Albert Broussard, Louis Broussard, Albert Broussard, Louis Broussard, Edwin Broussard, Blanche Broussard wife of Prestin Guilbeau and the said Prestin Guilbeau her husband, Marie Broussard wife of Richard Steckler and the said Richard Steckler her husband, Celina Gonsoulin wife of Valiere Dauterive and the said Valiere Dauterive her husband, Joe Gonsoulin, Leocadie Gonsoulin wife of John Broussard and the said John Broussard her husband, Marie Gonsoulin wife of Fernand Solomon and Fernand Solomon her husband, Helena Gonsoulin wife of Victor Lebauve and the said Victor Lebauve her husband, are plaintiffs in er-

ror, and the Gulf Company is defendant in error, to show cause, if any there be, why the judgment rendered against the said Fernand Bonin, Valcour Bonin and the others, above named plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 28 day of January, in the year of our Lord one thousand nine hundred and two.

CHARLES PARLANGE, Judge.

139 On this 28th day of January, 1902, before the undersigned authority personally came and appeared John E. Boehler, Deputy United States Marshal for the Eastern District of Louisiana, who being duly sworn, deposes and says that on the 28th day of January, 1902, he, affiant, served this writ on The Gulf Company by handing the same to Mr. E. H. Farrar of the firm of Farrar, Jonas & Kruttschnitt, attorneys of record for said "The Gulf Company," in person, in the City of New Orleans, Louisiana.

JOHN E. BOEHLER,
Deputy U. S. Marshal.

Sworn to and subscribed before me on this 28th day of January, A. D. 1902.

E. M. FULLER,
Deputy Clerk U. S. Circuit Court, Eastern District of Louisiana.

[Indorsed:) Return. United States Circuit Court, Eastern District of Louisiana. No. 12760. Heirs of Gonsoulin vs. Gulf Company. Citation on Writ of Error. Marshal's Return. Received by U. S. Marshal, New Orleans, La., Jan. 28, '02. No. ... U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. Filed Jan. 28, 1902. H. J. Carter, Clerk.

Stipulation.

Filed Feb. 21, 1902.

United States Circuit Court, Eastern District of Louisiana.

HEIRS OF GONSOULIN
vs. No. 12760.
THE GULF COMPANY.

It is agreed that all maps and plans, introduced in evidence on the trial hereof in the Circuit Court, by both plaintiffs and

defendant, shall be taken up and transmitted in the original to the Circuit Court of Appeals, along with transcript on the writ of error sued out herein, and for this reason no copies of said maps and plans shall be contained in said transcript.

(Signed) FARRAR, JONAS & KRUTTSCHNITT,
Atty's for Gulf Co.
DAVID TODD,
BRANCH K. MILLER,
Atty's for Heirs of Gonsoulin, Plaintiffs in Error.

140 United States of America.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

Clerk's Office.

I, Henry J. Carter, Clerk of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, do hereby certify, that the foregoing 174 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial in the case of The Heirs of Gonsoulin vs. The Gulf Company, No. 12760 of the docket of the said Court, except the following plans and maps of survey (offered in evidence), to-wit:

The plat representing the survey of tract of land made in conformity with Report No. 33 issued by the Commissioners of Western District of Louisiana, in favor of Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin, appearing in certified copy of patent of the United States issued August 21st, 1878, to Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin; which plat is noted at page 87 of this transcript.

The plat representing survey of a tract of land made in conformity with report No. 33, issued by the Commissioners of Western District of Louisiana, in favor of Dautrieve, Dubuclet, Benoist De St. Clair and Francois Gonsoulin, appearing in the copy of Commisssioners' Report No. 33, for the Eastern District of Louisiana, certified by James Lewis, Surveyor General of Louisiana, dated January 17th, A. D. 1901, which plat is noted at page 90 of this transcript.

The plat representing the survey of tract of land made in conformity with Report No. 33, issued by the Commissioners of Western District of Louisiana, in favor of Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin appearing in the certified copy of patent issued August 21, 1878, to Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin for sections 28, Tp. 17, S. R. 10 E. and 19, Tp. 17, S. R. 11 E.,

in Louisiana, containing 2826.28 acres, certified by Binger Hermann, Com'r of General Land Office, dated Washington, D. C., February 15, 1900, offered by plaintiff; which plat is noted at page 130 of this transcript; and

141 The map of survey offered by defendant November 13, 1901; Noted at page 137 of this transcript; .....

All of which said mentioned plats and map of survey are transmitted in the originals with this transcript to the U. S. Circuit Court of Appeals for the Fifth Circuit, in accordance with the stipulation copied at page 174 of this transcript.

Witness my hand and seal of said Court, at the City of New Orleans, State of Louisiana, this 26th day of February, A. D. 1902. [Seal] H. J. CARTER, Clerk.

142 THE HEIRS OF GONSOULIN
vs.
THE GULF COMPANY.

No..... Circuit Court of Appeals for the Fifth Circuit.

It is hereby stipulated and agreed that none of the maps and plans, which have been brought up as part of the transcript of the record below, shall be printed in the record for this court, but for all purposes for this writ of error shall be used in the original as brought up from the Circuit Court.

FARRAR, JONAS & KRUTTSCHNITT,
Counsel Gulf Co.
BRANCH K. MILLER,
Atty. for Plaintiff in Error.

The foregoing has the following endorsements, to-wit:

No. 1131. Circuit Court of Appeals for the Fifth Circuit. The Heirs of Gonsoulin vs. The Gulf Company. Stipulation and agreement that maps and plans shall not be printed but used in original for purposes of writ of error. U. S. Circuit Court of Appeals. Filed Mar. 29, 1902. Charles H. Lednum, Clerk. Branch K. Miller, Attorney for Heirs of Gonsoulin.

143 November Term, 1901.

May 7, 1902.

(Extract from Minutes.)

HEIRS OF GONSOULIN
vs. No. 1131.
THE GULF COMPANY.

This cause was regularly called this day, and after argument

by Mr. B. K. Miller for plaintiff in error, and by Mr. E. H. Farrar for defendant in error, the further hearing was postponed until Monday next.

November Term, 1901.

May 12, 1902.

(Extract from Minutes.)

HEIRS OF GONSOULIN
vs.
THE GULF COMPANY. No. 1131.

This cause came on again to be heard this day, and was submitted to the Court after further argument by Mr. B. K. Miller for plaintiff in error, and by Mr. E. H. Farrar for defendant in error.

November Term, 1901.

May 27, 1902.

(Extract from Minutes.)

HEIRS OF GONSOULIN
vs.
THE GULF COMPANY. No. 1131.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said Circuit Court in this cause be, and the same is hereby affirmed.

It is further ordered and adjudged that the plaintiffs in
144 error, Fernand Bonin, Valcour Bonin, Ovignac Bonin, Amanthe Toffier, widow, Mathilde Broussard, widow, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel, and Joseph Dressel, her husband, Azelie (or Herzalie) Bonin, wife of Leon Pallud (or Pavy) and Leon Pallud (or Pavy) her husband, Arsene Bonin, wife of Ulienor Dugas, and Ulienor Dugas, her husband, Corinne Breaux, wife of Aurelian Breaux, and Aurelian Breaux, her husband, Despany Broussard, father of Edward Despany, Jules Duperon, Pierre and Amelie Broussard, Nannie Bonin, wife of Amadie Gerois and Madaie Gerois, her husband, Arthur Gibson, Emily Gibson

wife of Caesar DeBlanc and Caesar DeBlanc her husband, Clemence Boutte, widow of Leo Decou and of Leo Decou, her husband, Clelie Berard, widow of Marshall Bonin, Alcee Boutte, Alphone Boutte, Alphonsine Boutte, wife of Oscar Gonsoulin, and Oscar Gonsoulin, her husband, Fernand Garret, John G. Boutte, Emily Boutte, wife of John Langlois, and John Langlois, her husband, Corrinne Boutte, wife of Jules Etie, and Jules Etie, her husband, Walter Boutte, Arthur Boutte, Edgar Boutte, Paul Boutte, by their natural tutrix Ora Harry Boutte, widow and natural tutrix of her said minor children Gascon Boutte, Sidney Boutte, represented by their mother widow Alcide Boutte, Laura Boutte, wife of Policarp Borel and Policarp Borel her husband, Louise Boutte, wife of Walter Harry, and Walter Harry her husband, Louise Boutte, Nemours Megues, Emily Boutte, wife of John Roland, and John Roland her husband, Paul Boutte, Mary Boutte, widow of P. D. Tatman, Frank Boutte, Joheph R. Boutte, Charles Boutte, Edmond Boutte, Oscar Boutte, May Boutte, wife of George Sheard and George Sheard, her husband, Alexander Boutte, Aristide Boutte, Laura Boutte, wife of Similian Rodriques, and Similian Rodriques, her husband, Marie Boutte, Cora Boutte, William Boutte, Henry Boutte, Hardy Boutte, Cora Boutte, wife of M. L. Keller and M. L. Keller, her husband, Blanche Boutte, Blanche Boutte, wife of Garcia Romero, and Garcia Romero, her husband, Maria Boutte, wife of Charles Espinar, and Charles Espinar, her husband, T. Pere Herbert and Tontant Herbert by their father and natural tutor Ovide Herbert, Paul Boutte, Ada Boutte, Marie Boutte, represented by their mother and natural tutrix Zoe Robinchaux Boutte, Olympe Boutte, wife of August Delpit, and August Delpit, her husband, Blanche Boutte, wife of Charles Delpit and Charles Delpit, her husband, Clara Boutte, wife of Charles Durant, and Charles Durant, her husband, Albert Boutte, Edward Boutte, Celina Boutte, wife of H. Gerois and H. Gerois her husband, Edward Boutte, Celina Boutte, wife of Clerville T. Patin, and Clerville T. Patin, her husband, Angel Castello, widow of Buillard, Mathilde Castello, wife of Emile Landry, and Emile Landry, her husband, George Greigg, Louis Greigg, Agelice Greigg, wife of H. Clair Dugas, and H. Clair Dugas, her husband, Henry Greigg, George Greigg, Adeline Greigg, Etta Greigg, Agatha Greigg, Mary Himel, Rosa Himel, wife of M. D. Dalferes and M. D. Dalferes, her husband, Corinne Himel, Olympe Himel, Rosa Greigg DeBlanc, widow of Ralph DeBlanc, John Greigg, Carlos Greigg, Mathilde Castello, wife of Emile Landry, and Emile Landry her husband, Angel Castello, widow of August Baillard, Euphemie Gonsoulin, wife of Gaston Gerois and Gas-

ton Gerois her husband, Eugenie Gonsoulin, wife of Edmond Gonsoulin, and Edmond Gonsoulin, her husband, Joseph Gonsoulin, Numa Gonsoulin, Celemar Gonsoulin, wife of Edward Nero and Edward Nero her husband, Oscar Gonsoulin, Dupre Gonsoulin, Louise Gonsoulin, wife of Albert Levert, and Albert Levert her husband, Sidney Gonsoulin, Mathilda Gonsoulin, wife of Sosthene Breaux, and Sosthene Breaux, her husband, Dorsienne Gonsoulin, wife of Jules Grivat, and Jules Grivat her husband, Charles Fontelieu, Albert Fontelieu, Pauline (or Polain) Fontelieu, Annette Fontelieu, Natalie Gonsoulin, wife of Euselie Zeleu, and Euselie Zeleu her husband, Erzelie Gonsoulin, widow of Octave Boutte, Marie Gonsoulin, wife of Solomer Solomon, and Selomer Solomon her husband, Joe Gon-
146 soulin, Leocadie Gonsoulin, wife of John Broussard, and John Broussard, her husband, Alcide Gonsoulin, Adrien Gonsoulin, St. Clair Dugas, Alida Dugas, wife of Eugene Verret, and Eugene Verret, her husband, Herzalie Gonsoulin, wife of H. Maurice Prevost, and H. Maurice Prevost, her husband, Anatole Gonsoulin, Fernand Gonsoulin, Eva Gonsoulin, wife of Damas Moresi, and Damas Moresi, her husband, Alfred Gonsoulin, Jr., Sidney Gonsoulin, Corinne Gonsoulin, the last three minors represented by their natural tutrix Suzette Gonsoulin, Eva Labau, represented herein by her father and natural tutor, George Labau, Aminthe Bienvenue, widow of Dauterive Toffier, Mathilde Bienvenue, wife of Telesphore Broussard and Telesphore Broussard her husband, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joe Dressel, and Joe Dressel, her husband, Herzalie Bonin, wife of Leon Pallud and Leon Pallud, her husband, Arsene Bonin, wife of Ulienor Dugas and Ulienor Dugas, her husband, Corinne Bonin, wife of Aurelian Breaux, and Aurelian Breaux, her husband, Mamie Bonin, wife of Amadie Gerois and Amadie Gerois her husband, Olivia Bonin, wife of Despany Broussard and Despany Broussard, Fernand Bonin, Ovignac Bonin, Valcour Bonin, Desire Gonsoulin, Edwin Dugas, Edmond Dugas, Edward Dugas, Leonce Dugas, Marie Louise Dugas, wife of Henry Lee Dugas, and Henry Lee Dugas her husband, Homer Gonsoulin, Esulie Gonsoulin, Luzin Gonsoulin, Robert F. Broussard, Albert Broussard, Louis Broussard, Edwin Broussard, Blanche Broussard, wife of Prestin Guilbeau and Prestin Guilbeau her husband, Marie Broussard, wife of Richard Steckler and Richard Steckler, her husband, Celina Gonsoulin, wife of Valiere Dauterive, and Valiere Dauterive, her husband, Joe Gonsoulin, Leocadie Gonsoulin, wife of John Broussard, and John Broussard her husband, Marie Gonsoulin, wife of Fernand Solomon and Fernand Solomon her husband, Helena Gonsoulin, wife of Victor Lebauve and Victor

Lebauve her husband, and the surety on the write of error bond herein, Wm. Adler, be condemned in solido to pay the costs of this cause in this court for which execution may be issued out of said Circuit Court.

May 27, 1902.

147 HEIRS OF GONSOULIN
vs
THE GULF COMPANY. No. 1131.

United States Circuit Court of Appeals, Fifth Circuit.

Assignment of Errors.

That plaintiffs in this action in the Circuit Court, and the plaintiffs in error in the present writ of error applied for by them, in connection with their petition for a writ of error, make the following assignment of errors which they aver occurred on the trial and at the hearing of this cause, in the Circuit Court of Appeals, for the Fifth Circuit, to-wit:

1st. That the Court erred in holding that the plaintiffs in the Circuit Court, and plaintiffs in error herein, acquired any title under the grant herein or through confirmation of the same by an Act of Congress, by the approval of the survey of 1842, described in the record; and that the Court should have held the contrary.

2nd. That the Court herein erred in holding that the patent which was issued herein upon the claim of Dauterive Dubuclet, Benoist de St. Clair, and Francois Gonsoulin, on August 21, 1878, was not the first severance of the property described, from the public domain of the United States, but was merely evidence of the title of plaintiffs in error here, or those of whom they were the legal heirs; and the Circuit Court of Appeals should have held the reverse.

3rd. That the said Circuit Court of Appeals erred in sustaining the pleas of prescription of ten and thirty years founded upon the statutes of Louisiana, and the Circuit Court of Appeals also erred, particularly, in holding that the character of the possession shown by the defendant in error herein, was sufficient to sustain such pleas of prescription, or that the said possession was such as was extended to the area of the land claimed by the plaintiffs in the Circuit Court, and plaintiffs in error herein, and claimed adversely by the defendant in error herein; that in point of fact there was not such possession of such land as was required by law, nor was their such possession in point
148 of law, which was possession it should have been to the extent necessary to sustain such pleas of prescription;

and the Circuit Court of Appeals should have held the reverse thereof.

These plaintiffs, in the Circuit Court, and plaintiffs in error here, as errors committed in the trial and hearing of this cause in the said Circuit Court of Appeals, assign as errors the same matters which are set up and so assigned in the Assignment of Errors filed in the United States Circuit Court on January 28, 1902, and relied as errors of said Circuit Court, upon which the reversal of said judgment of the Circuit Court was sought, to-wit:

1st. That the Court erred in holding that there was any divestiture of the title of the United States in favor of Walter Brashear or Samule Watson by the confirmation obtained by the latter, from the Board of Land Commissioners; that the said confirmation was made under the authority of the Act of March 3, 1807, Second Statutes at Large, p. 440; that the procedure in case of the final decision of the Board of Commissioners in favor of the claimant authorized by Section 4 did not become conclusive or effective until a copy of the said confirmation being filed in the land office, and survey and plat of the land designated in the confirmation made by the Surveyor General or the other officer acting as such, when and after which, the claimant was entitled to obtain from the land office a certificate of confirmation, and its registry, which upon presentation to the Secretary of the Treasury (Interior) entitled the party to a patent; that the confirmation by the Commissioners was by the said act made to depend for its effect, and was conditioned upon a subsequent survey of the land under the authority of the United States, and until such survey was made subsequent to the confirmation, and the filing thereof in the Land Office, the confirmation was simply an incohate title to an unlocated tract of land, and applying to no particular tract, until a survey of same was made, designating and identifying the land thereby covered, the title of the land, the subject of the confirmation, remained in the United States. That Act of 1807 intended that the Commissioners should adjudge the existence of good titles to lands held under French or Spanish possessors, but not intend that a final or legal title as against the United States should be made until their bounds have been ascertained, and the particular tract defined by survey.

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2nd. That the Court erred in holding that the dictum found in the opinion of the Supreme Court of Louisiana, in the case of Gonsoulin vs. Brashear, 5 Martin, new series, (Louisiana) page 35; "The Government of the United States have relinquished their title to both," (plaintiffs and defendants) was conclusive to the effect that Brashear had at the date of that suit acquired the legal title of the United States.

3rd. That the Court erred in holding that Gonsoulin vs. Brashear, 5 Martin, New Series, was res judicata, as concerns the title acquired by plaintiffs subsequent to that suit and decision, evidenced by the United States patent sued upon.

4th. That the United States did not part with its title to the land sued for herein until the issuance of its patent to plaintiffs ancestors in 1878; that there had been no prior severance of the said land or property from the public domain.

That the Court erred in holding that the title of the United States to this land or property was divested *in favor of any* private person prior to the issuance of its patent; or that the same had been severed from the public domain of the United States at any time prior to the issuance of the said patent.

5th. That the Court erred in holding that the defendant or any of the authors of its title had held or enjoyed such possession of said land or property as is or would be sufficient to support or acquire a title to the same under the Civil Code of Louisiana, by prescription or adverse possession.

That the only claim by right under which said property was ever at any time held, by any of the persons upon whose supposed title or possession the defendant relies, was to such right, title and interest as may have been had in said property by the vendor or author from whom the several parties in question purchased; that a party holding under such a title does not possess as owner, and that hence his possession is not sufficient to operate a title by prescription however long may be its duration, and that the Court erred in not so holding.

6th. That under the whole of the evidence and testimony offered and introduced on the trial of the cause, defendant could not maintain its claim to a title by the prescription of ten years, established by the Civil Code of Louisiana.

7th. That the Court erred in holding that there had been at any time prior to 1878, any survey by the proper officers of the United States of the claim confirmed to Francois Gonsoulin, Dauterive Dubulet, or Benoist de St. Clair, which had the effect of separating the land or property covered by said claim or confirmation, from the public domain, and making it private property.

8th. That the court erred that there ever was any confirmation by the United States of any claim or title in favor of Samuel Watson or of Walter Brashear to the land or property which is sued for herein, or of any part thereof; and the court also erred in holding that the fee of, or title to the said property, at any time had ever passed from the United States to the said Watson or the said Walter Brashear.

9th. That the court erred in holding that there ever had been at any time any survey or other location of confirmation

by the United States of the said land or property, or any portion thereof, in favor of either the said Watson or the said Brashear or that the claim of the said Watson or the said Brashear relied upon by the defendant herein, was ever located or identified by limits, boundaries or by any lawful and sufficient authorities of the United States.

9th. That the court erred in holding that there was any divestiture of the title of the United States to the land or property sued for herein, at any date prior to the issuance by the United States of its patent in favor of Francois Gonsoulin, Benoist de St. Clair and Dauterive Dubuclet, in the year 1878, in favor of any person whatsoever.

151 10th. That the court erred in any event in maintaining a title in defendant to any quantity of the property or land sued for herein in excess of three hundred and seventy-one arpents, this being the utmost quantity of land which in any event would be comprehended in any confirmation made by the United States of the title or claim of Samuel Watson or Walter Brashear, or of which there was any adverse possession sufficient to support the pleas of prescription made.

11th. That the court in any event should have instructed the jury to find herein a verdict for plaintiffs on the ground, if on no other, that the title of plaintiffs being a patent of the United States, should have prevailed over any and all other titles purporting to be derived from the United States; and the Court erred in not so instructing the jury.

12th. That the court erred in holding that at the time of the issuance of the patent herein to Francois Gonsoulin, Dauterive Dubuclet and Benoist De St. Clair, on the 13th day of ..... 1878, the United States was without power to issue said patent, that the court should have held that the legal title to said property or land was and remained in the United States up to and until issuance of its said patent, and by the latter it conveyed the legal title to said land or property to the parties named therein and their lawful heirs.

13th. That the court erred in holding that there was any adverse possession of the said land or property in any of the so called authors or defendant's asserted title, prior to the issuance of the said patent of the United States; that the court should have held that any possession of the said land or property prior to the issuance of the said patent can not be the basis of any rights in favor of this defendant, but constituted a trespass; that the court also erred in holding that there was possession for a sufficient length of time, either by defendant or any or all of the authors of its pretended title, sufficient to acquire said land by prescription, under the civil code of Louisiana or to support any action by plaintiffs for the recovery of said land or property.

152 14th. That the court erred in holding that there had been or was held by the defendant or any or the authors of its title, any posession sufficient in character and extent, or any part of the land sued for herein.

Wherefore, plaintiffs in error pray that the judgment herein of the Circuit Court of Appeals of the United States, for the Fifth Circuit, be reversed, and such direction be given that full force and efficacy may inure to plaintiffs by reason of the claim, demand and cause of action set up in their petition filed in this cause; that the judgment of the said Circuit Court of Appeals, and of the Circuit Court of the United States, for the Eastern District of Louisiana, be reversed and that the said court be directed to grant a new trial of this cause.

BRANCH K. MILLER,
Attorney for Fernand Bonin and others plaintiffs in the Circuit Court, and plaintiffs in error in the Circuit Court of Appeals, and the Supreme Court of the United States.

The foregoing has the following endorsements, to-wit:

No. 1131. U. S. Circuit Court of Appeals, Fifth Circuit. Heirs of Gonsoulin vs. The Gulf Company. Assignment of Errors. Filed 19 day of May, 1903, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals. Branch K. Miller, Attorney for Plaintiffs in Error.

153 United States Circuit Court of Appeals, Fifth Circuit.

HERIS OF GONSOULIN
vs. No. 1131.
THE GULF COMPANY.

Now comes Fernand Bonin, Valcour Bonin, Ovignac Bonin, Amanthe Toffier, widow, Mathilde Broussard, widow, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel, and Joseph Dressel, her husband, Azelie Bonin, wife of Leon Pallud (or Pavy) and Leon Pallud (or Pavy) her husband, Arsene Bonin, wife of Ulienor Dugas, and Ulienor Dugas, her husband, Corinne Breaux, wife of Aurelian Breaux, and Aurelian Breaux, her husband, Despany Broussard, wife of Edward Despany, Jules Duperon, Pierre and Amelie Broussard, Nannie Bonin, wife of Amadie Gerois and Amadie Gerois, her husband, Arthur Gibson, Emily Gibson wife of Ceasar DeBlanc and Caesar DeBlanc her husband, Clemence Boutte, widow of Leo Decou, Clelie Berard, widow of Marshall Bonin, Alcee Boutte, Alphone Boutte, Alphonsine Boutte, wife of Oscar Gonsoulin, and Oscar Gonsoulin, her husband, Fernand Garret,

John G. Boutte, Emilie Boutte, wife of Jules Etie, and Jules Etie, her husband, Walter Boutte, Arthur Boutte, Edgar Boutte, Paul Boutte, by their natural tutrix Ora Harry Boutte, widow and natural tutrix of her said minor children Gaston Boutte, Sidney Boutte, represented by their mother widow Alcide Boutte, Laura Boutte, wife of Policarp Borel and Policarp Borel her husband, Louise Boutte, wife of Walter Harry, and Walter Harry her husband, Louise Boutte, Nemours Megues, Emily Boutte, wife of John Roland, and John Roland her husband, Paul Boutte, Mary Boutte, widow of P. D. Tatman, Frank Boutte, Joseph R. Boutte, Charles Boutte, Edmond Boutte, Oscar Boutte, May Boutte, wife of George Scheard and George Sheard, her husband, Alexander Boutte, Aristide Boutte, Laura Boutte, wife of Similian Rodriques, and Similian Rodriques, her husband, Marie Bonzoine, Frank Boutte, William Boutte, Henry Boutte, Hary Boutte, Cora Boutte, wife of M. L. Keller and M. L. Keller, her husband, Blanche Boutte, wife of Garcia Romero, and Garcia Romero, her husband,
154 Maria Boutte, wife of Charles Espinar, and Charles Espinar, her husband, T. Pere Herbert and Tontant Herbert by their father and natural tutor Ovide Herbert, Paul Boutte, Ada Boutte, Marie Boutte, represented by their mother and natural tutrix Zoe Robinchaux Boutte, Olympe Boutte, wife of August Delpit, and August Delpit, her husband, Blanche Boutte, wife of Charles Delpit and Charles Delpit, her husband, Clara Boutte, wife of Charles Durant, and Charles Durant, her husband, Albert Boutte, Edward Boutte, Celina Boutte, wife of H. Gerois and H. Gerois her husband, Edward Boutte, Celina Boutte, wife of A. Romero, and A. Romero, her husband, Elizabeth Coralie Boutte, wife of Clerville T. Patin, and Clerville T. Patin, her husband, Angel Castello, widow of Buillard, Mathilde Castello, wife of Emile Landry, and Emile Landry, her husband, George Greigg, Louis Greigg, Agelice Greigg, wife of H. Clair Dugas, and H. Clair Dugas, her husband, Henry Greigg, George Greigg, Adeline Greigg, Etta Greigg, Agatha Greigg, Mary Himel, Rosa Himel, wife of M. D. Dalferes and M. D. Dalferes, her husband, Corinne Himel, Olympe Himel, Rosa Greigg DeBlanc, widow of Ralph DeBlanc, John Greigg, Carlos Greigg, Mathilde Castello, wife of Emile Landry, and Emile Landry her husband, Angel Castello, widow of August Baillard, Euphemie Gonsoulin, wife of Gaston Gerois and Gaston Gerois her husband, Eugenie Gonsoulin, wife of Edmond Gonsoulin, and Edmond Gonsoulin, her husband, Joseph Gonsoulin, Numa Gonsoulin, Celemar Gonsoulin, wife of Edward Nero and Edward Nero her husband, Oscar Gonsoulin, Dupre Gonsoulin, Louise Gonsoulin, wife of Albert Levert and Albert Levert her husband, Sidney Gonsoulin, Mathilda Gonsoulin, wife

of Sosthene Breaux, and Sosthene Breaux, her husband, Dorsienne Gonsoulin, wife of Jules Grivat, and Jules Grivat her husband, Charles Fontelieu Albert Fontelieu, Polain Fontelieu, Annette Fontelieu, Natalie Gonsoulin, wife of Euselie Zeleu, and Euselie Zeleu her husband, Erzelie Gonsoulin, widow of Octave Boutte, Marie Gonsoulin, wife of Selomer Solomon, and Selomer Solomon her husband, Joe Gonsoulin, Leo-
155 cadie Gonsoulin, wife of John Broussard, and John Broussard, her husband, Alcide Gonsoulin, Adrien Gonsoulin, St. Clair Dugas, Alide Dugas, wife of Eugene Verret, and Eugene Verret, her husband, Herzalie Gonsoulin, wife of H. Maurice Prevost, and H. Maurice Prevost, her husband, Anatole Gonsoulin, Fernand Gonsoulin, Eva Gonsoulin, wife of Damas Meresi, and Damas Moresi, her husband, Alfred Gonsoulin, Jr., Sidney Gonsoulin, Corinne Gonsoulin, the last three minors represented by their natural tutrix Suzette Gonsoulin, Eva Labau, represented herein by her father and natural tutor, George Labau, Arminthe Gonsoulin, widow of Dauterive Toffier, Mathilde Gonsoulin, widow of Telesphore Broussard and Telesphore Broussard her husband, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel, and Joseph Dressel, her husband, Herzalie Bonin, wife of Leon Pallud and Leon Pallud, her husband, Arsene Bonin, wife of Ulienor Dugas and Ulienor Dugas, her husband, Corinne Bonin, wife of Aurelian Breaux, and Aurelian Breaux, her husband, Mamie Bonin, wife of Amadie Gerois and Amadie Gerois her husband, Olivia Bonin, wife of Despany Broussard and Despany Broussard her husband, Fernand Bonin, Ovignac Bonin, Valcour Bonin, Desire Gonsoulin, Edwin Dugas, Edmond Dugas, Edward Dugas, Leonce Dugas, Marie Louise Dugas, wife of Henry Lee Dugas, and Henry Lee Dugas her husband, Homer Gonsoulin, Euselie Gonsoulin, Luzin Gonsoulin, Robert F. Broussard, Albert Broussard, Louis Broussard, Edwin Broussard, Blanche Broussard, wife of Prestin Guilbeau and Prestin Guilbeau her husband, Marie Guilbeau, wife of Richard Steckler and Richard Steckler, her husband, Celina Gonsoulin, wife of Valiere Dauterive, and Valiere Dauterive, her husband, Joe Gonsoulin, Leocadie Gonsoulin, wife of John Broussard, and John Broussard her husband, Marie Gonsoulin, wife of Fernand Solomon and Fernand Solomon her husband, Helena Gonsoulin, wife of Victor Lebauve and Victor Lebauve her husband, plaintiffs in the Circuit Court, and plaintiffs in error in the above numbered and entitled cause. And on suggesting that in this case the jurisdiction is not de-
156 pendent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different states; that in this case,

the plaintiffs sued upon or claimed rights created by, arising from or dependent upon a patent of the United States for certain land therein described, and also for the recognition of rights which depend upon the question whether or not the land described in the petition was or was not severed from the public domain of the United States at a certain time.

The plaintiffs herein claim rights arising under the Constitution and laws of the United States and which are dependent upon a proper construction or interpretation of the same.

That the matter in controversy herein, is of a value exceeding one thousand dollars, ($1,000.00) besides the costs of this suit.

And on suggesting that there has been error to the prejudice of plaintiffs in the final judgment rendered herein by the Court in favor of the defendant on the 27th day of May, 1902, as will more in detail appear from the assignment of errors which are filed with this motion, move the court to allow them, plaintiffs, to prosecute a writ of error to the Honorable the United States Supreme Court, under and in accordance with the law of the United States in that behalf made and provided; and also that an order be made, fixing the amount of the security which they, the said plaintiffs, shall give and furnish upon said writ of error.

BRANCH K. MILLER,
Atty. for Petitioner.

HEIRS OF GONSOULIN
vs.
GULF COMPANY.

Upon motion of Branch K. Miller, Attorney for plaintiffs in the Circuit Court, and plaintiffs in error, in this court, and upon filing a petition for a writ of error, and an assignment of errors,

It is Ordered, that a writ of error be and hereby is
157 allowed the said plaintiffs in the Circuit Court, and plaintiffs in error in this court, to have reviewed in the Supreme Court of the United States, the final judgment heretofore entered on May 27th, 1902, and the amount of the bond on said writ of error be and it is hereby fixed at the sum of one hundred and fifty dollars. May 22, 1903.

DAVID D. SHELBY,
U. S. Circuit Judge.

The foregoing has the following endorsements, to-wit: No. 1131. U. S. Circuit Court of Appeals, Fifth Circuit. Heirs of Gonsoulin vs. The Gulf Company. Petition for writ of error

and order allowing same. Filed 26 day of May, 1903, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals. Branch K. Miller, Attorney for Plaintiffs in Error.

158 Bond for Writ of Error.

United States Circuit Court of Appeals, Fifth Circuit.

HEIRS OF GONSOULIN
vs. No. 1131.
THE GULF COMPANY.

KNOW ALL MEN BY THESE PRESENTS, that we, Fernand Bonin, Valcour Bonin, Ovignac Bonin, Amanthe Toffler, widow, Mathilde Broussard, widow, Edgard Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel, and Joseph Dressel, her husband, Azelie (or Herzalie) Bonin, wife of Leon Pallud (or Pavy) and Leon Pallud (or Palvy) her husband, Arsene Bonin, wife of Ulienor Dugas, and Ulienor Dugas, her husband, Corinne Breaux, wife of Aurelian Breaux, and Aurelian Breaux her husband, Despany Broussard, father of Edward Despany, Jules Duperon, Pierre and Amelie Broussard, Nannie Bonin, wife of Amadie Gerois and Amadaie Gerois, her husband, Arthur Gibson, Emily Gibson wife of Ceasar DeBlanc and Caesar DeBlanc her husband, Clemence Boutte, wife of Leo Decou and of Leo Decou, her husband, Clelie Berard, widow of Marshall Bonin, Alcee Boutte, Alphone Boutte, Alphonsine Boutte, wife of Oscar Gonsoulin, and Oscar Gonsoulin, her husband, Fernand Garret, John G. Boutte, Emily Boutte, wife of John Langlois, and John Langlois, her husband, Corinne Boutte, wife of Jules Etie, and Jules Etie, her husband, Walter Boutte, Arthur Boutte, Edgar Boutte, Paul Boutte, by their natural tutrix Ora Harry Boutte, widow and natural tutrix of her said minor children Gaston Boutte, Sidney Boutte, represented by their mother widow Alcide Boutte, Laura Boutte, wife of Policard Borel and Policarp Borel her husband, Louise Boutte, wife of Walter Harry, and Walter Harry her husband, Louise Boutte, Nemours Megues, Emily Boutte, wife of John Roland, and John Roland her husband, Paul Boutte Mary Boutte, widow of P. D. Tatman, Frank Boutte, Joseph R. Boutte, Charles Boutte, Edmond Boutte, Oscar Boutte, May Boutte, wife of George Sheard and George Sheard, her husband, Alexander Boutte, Aristide Boutte, Laura Boutte, wife of Similian Rodriques, and Similian Rodriques, her husband, Frank Boutte, William Boutte, Henry Boutte, Mary Boutte, Cora Boutte, wife of M. L. Keller and M. L. Keller, her husband, Blanche Boutte, Blanche Boutte, wife of Garcia Romero, and Garcia Romero, her

husband, Maria Boutte, wife of Charles Espinar, and Charles Espinar, her husband, T. Pere Herbert and Tontant Herbert by their father and natural tutor Ovide Herbert, Paul Boutte, Ada Boutte, Marie Boutte, represented by their mother and natural tutrix Zoe Robinchaux Boutte, Olympe Boutte, wife of August Delpit, and August Delpit, her husband, Blanche Boutte, wife of Charles Delpit and Charles Delpit, her husband, Clara Boutte, wife of Charles Durant, and Charles Durant, her husband, Albert Boutte, Edward Boutte, Celina Boutte, wife of H. Gerois and H. Gerois her husband, Edward Boutte, Celina Boutte, wife of Clerville T. Patin, and Clerville T. Patin, her husband, Angel Castello, widow of Buillard, Mathilde Castello, wife of Emile Landry, and Emile Landry, her husband, George Greigg, Louis Greigg, Angelice Greigg, wife of H. Clair Dugas, and H. Clair Dugas, her husband, Henry Greigg, George Greigg, Adeline Greigg, Etta Greigg, Agatha Greigg, Mary Himel, Rosa Himel, wife of M. D. Dalferes and M. D. Dalferes, her husband, Corinne Himel, Olympe Himel, Rosa Greigg DeBlanc, widow of Ralph DeBlanc, John Greigg, Carlos Greigg, Mathilde Castello, wife of Emile Landry, and Emile Landry her husband, Angel Castello, widow of August Baillard, Euphemie Gonsoulin, wife of Gaston Gerois and Gaston Gerois her husband, Eugenie Gonsoulin, wife of Edmond Gonsoulin, and Edmond Gonsoulin, her husband, Joseph Gonsoulin, Numa Gonsoulin, Celemar Gonsoulin, wife of Edward Nero and Edward Nero her husband, Oscar Gonsoulin, Dupre Gonsoulin, Louise Gonsoulin, wife of Albert Levert and Albert Levert her husband, Sidney Gonsoulin, Mathilda Gonsoulin, wife of Sosthene Breaux, and Sosthene Breaux, her husband, Dorsienne Gonsoulin, wife of Jules Grivat, and Jules Grivat her husband, Charles Fontelieu, Albert Fontelieu, Pauline (or Polain) Fountelieu, Annette Fontelieu, Natalie Gonsoulin, wife of Euselie Zeleu, and Euselie Zeleu her husband, Erzelie Gonsoulin, widow of Octave Boutte, Marie Gonsoulin, wife of Solomer Solomon, and Selomer Solomon her husband,
160 Joe Gonsoulin, Leocadie Gonsoulin, wife of John Broussard, and John Broussard, her husband, Alcide Gonsoulin, Adrien Gonsoulin, St. Clair Dugas, Alida Dugas, wife of Eugene Verret, and Eugene Verret, her husband, Herzalie Gonsoulin, wife of H. Maurice Prevost, and H. Maurice Prevost, her husband, Anatole Gonsoulin, Fernand Gonsoulin, Eva Gonsoulin, wife of Dumas Meresi, and Damas Moresi, her husband, Alfred Gonsoulin, Jr., Sidney Gonsoulin, Corinne Gonsoulin, the last three minors represented by their natural tutrix Suzette Gonsoulin, Eva Labau, represented herein by her father and natural tutor, George Labau, Aminthe Gonsoulin, widow of Dauterive Toffier, Mathilde Gonsoulin, wife of Telesphore

Broussard and Telesphore Broussard her husband, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joe Dressel, and Joe Dressel, her husband, Herzalie Bonin, wife of Leon Pallud and Leon Pallud, her husband, Arsene Bonin, wife of Ulienor Dugas and Ulienor Dugas, her husband, Corinne Bonin, wife of Aurelian Breaux, and Aurelian Breaux, her husband, Mamie Bonin, wife of Amadie Gerois and Amadie Gerois her husband, Olivia Bonin, wife of Despany Broussard and Despany Broussard, Fernand Bonin, Ovignac Bonin, Valcour Bonin, Desire Gonsoulin, Edwin Dugas, Edmond Dugas, Edward Dugas Leonce Dugas, Marie Louise Dugas, wife of Henry Lee Dugas, and Henry Lee Dugas her husband, Homer Gonsoulin, Esulie Gonsoulin, Luzin Gonsoulin, Robert F. Broussard, Albert Broussard, Louis Broussard, Edwin Broussard, Blanche Broussard, wife of Prestin Guilbeau and Prestin Guilbeau her husband, Marie Broussard, wife of Richard Steckler and Richard Steckler, her husband, Celina Gonsoulin, wife of Valiere Dauterive, and Valiere Dauterive, her husband, Joe Gonsoulin, Leocadie Gonsoulin, wife of John Broussard, and John Broussard her husband, Marie Gonsoulin, wife of Fernand Solomon and Fernand Solomon her husband, Helena Gonsoulin, wife of Victor Lebauve and the said Victor Lebauve her husband, herein acting and appearing by their attorney, Branch K. Miller, as principal, and William Adler as surety, are held and firmly bound unto The Gulf Company, defendant in the Circuit Court, and defendant in
161 error herein, in the full and just sum of one hunderd and fifty dollars, to be paid to The said The Gulf Company, above named, certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 19th day of May, A. D. 1903.

Whereas, lately at a session of the United States Circuit Court of Appeals, Fifth Circuit, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between the said Fernand Bonin and other obligees, and plaintiffs in error named and The Gulf Company, a judgment was rendered against the said Fernand Bonin and other obligees, above named, and the said Fernand Bonin and other obligees, above named, having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Gulf Company citing and admonishing it to be and appear before the Supreme Court of the United States, to be holden at the City of Washington, D. C., within thirty days from the date thereof.

NOW, the condition of the above obligation is such that if the said Fernand Bonin and the other obligees, above named, shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good then the above obligation to be void; else to remain in full force and virtue.

Fernand Bonin and others above named plaintiffs in error by their attorney.

BRANCH K. MILLER,
WM. ADLER.

Approved by: David D. Shelby, U. S. Circuit Judge.

The foregoing has the following endorsements, to-wit:

No. 1131. U. S. Circuit Court of Appeals, Fifth Circuit, Heirs of Gonsoulin vs. The Gulf Company. Bond for Writ of Error. Filed 25 day of May, 1903, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals. Branch K. Miller, Attorney for Plaintiffs in error.

162 U. S. Circuit Court of Appeals,
Filed May 27, 1902.
CHARLES H. LEDNUM,
Clerk.

United States Circuit Court of Appeals, Fifth Circuit.

November Term, 1901.

No. 1131.

HEIRS OF GONSOULIN, PLAINTIFFS IN ERROR,
v.
THE GULF COMPANY, DEFENDANT IN ERROR.

Error to the Circuit Court of the United States for the Eastern District of Louisiana.

Before PARDEE, McCORMICK, and SHELBY, Circuit Judges.

The heirs of Gonsoulin (the plaintiffs in error) brought this action, June 30, 1898, against the Gulf Company (the defendant in error), a New Jersey corporation, in the district court of St. Mary's Parish, where the land claimed is situated. The action was removed by the defendant into the Circuit Court of the United States. The original petition is in the customary form for a petitory action for real property, and describes the land involved as follows:

"A tract of land called Belle Isle, consisting of section nineteen (19), township seventeen (17) south, range eleven (11) east, nineteen hundred and eighteen and 75-100 acres; section twenty-eight (28), township seventeen (17) south, range ten (10) east, nine hundred and seven and 63-100 acres; section one (1), township eighteen (18) south, range ten (10) east, one hundred and thirty-seven and 76-100 acres; and section
163 two (2), township eighteen (18) south, range ten (10) east, sixteen and 44-100 acres. All lying in the Parish of St. Mary, fronting on Wax Bayou and lying on the Atchafalaya Bay in the Southwestern Land District of Louisiana, Parish of St. Mary."

The defendant for peremptory exception pleaded prescription of 10 and 30 years. Thereafter the defendant appeared and disclaimed title and possession of all that portion of the property claimed in the plaintiffs' petition lying east of Doctor's Bayou, being that portion of section 19 of township 17 south, range eleven east, lying east of Doctor's Bayou. The case came on to be heard on these pleas, and the court charged the jury peremptorily to find for the defendant on its pleas of prescription. It was shown on the trial that the land in dispute was granted in 1783 by the Spanish Government to the ancestor of the plaintiffs and certain associates of his at that time, the description of the land as shown in the grant being "an island called Belle Isle, on the Bay of Atchafalaya, about four leagues west of the mouth of the Atchafalaya and thirty-two leagues from Attakapas, said island containing about one league in front by the ordinary depth." The defendant claims that the natural boundaries of the island are Wax Bayou on the north and west, Doctor's Bayou on the east, and the Atchafalaya Bay on the south; that all of the land within these limits, consisting of about 400 acres of highland and from 1,500 to 2,400 acres of trembling prairie, or marsh land, has always been known as "Belle
164 Isle;" and the defendant claims that the land within these limits is what it now claims to own and possess, and what all its predecessors in title and possession have claimed and possessed, since 1802. On May 2, 1763, Governor Miro, of the Spanish colony of Louisiana, isued an order of survey directing the surveyor general of the province to put Francois Gonsoulin and his associates in possession of an island called "Belle Isle," etc. The claim founded upon this order for survey was under the Act of Congress of March 13, 1807, presented to the board of commissioners for the examination of land titles provided for by that act. By that board the claim was placed in what it termed "Class B," which the board declared, in its opinion, should be confirmed by Congress. All claims marked "B" on this report of the commissioners were confirmed by an

act of Congress of date April 28, 1816. Under a contract of October 10, 1837, A. F. Rightor and Andrew McCullom, deputy surveyors, appear to have surveyed this claim, and there are found in the record the field notes of that survey. The field notes of the survey were approved on August 1, 1838, by H. T. Williams, surveyor general of Louisiana, and when the map of the survey had been completed the surveyor general endorsed his approval thereon under date of December 8, 1842, but on the 23d day of the same month he made a note on the plat of the survey that since the approval of the map it appeared by the testimony of the chain-carriers that the surveys under
165 the contract of October 10, 1837, were but partially made in the field. It distinctly appears that this survey as shown in the field notes of Rightor and McCullom, deputy surveyors, approved by Surveyor General Williams on August 1, 1838, and shown in the map and plat of that survey (endorsed as above noted, December 8th and 23d, 1842), furnished the description which O. H Brewster, surveyor general of Louisiana, examined and approved on April 22, 1878, for his report recites: "The following being the description of the surveys taken from approved field notes of A. F. Rightor and Andrew McCollom, deputy surveyors, and embodied in the patent which issued on the 21st of August, 1878." On July 30, 1802, an order of survey was issued by Moralis, the intendant of the province, for 371 superficial arpents, in favor of Samuel Watson, on the island known as "Belle Isle," in the county of Attakapas, in the Bay of Atchafalaya. This land was surveyed by the surveyor general of the province on November 8, 1802. Watson made settlement on this property prior to December 20, 1803, and thereafter remained in possession until his title was divested by a judicial sale made to one Kershaw by the parish judge on February 27, 1808, the formal deed of the judge being dated July 25, 1809. In this deed the property is described as "the tract or parcel of land known by the name of 'Belle Isle,' situated near the mouth of the Atchafalaya," and the sale was made of "all the above described tract or parcel of land situated as aforesaid, containing the whole island of 1,500 acres,
166 more or less." On July 24, 1809, Kershaw sold this property by warranty deed to Henry Johnson by the same description. On August 5, 1809, Johnson sold the property by quit-claim deed to Walter Brashear. Brashear, claiming under Watson, presented his claim to "Belle Isle" to the board of land commissioners appointed to examine, confirm and report on titles of Louisiana under the acts of Congress approved March 3, 1807. On July 22, 1811, the board confirmed this grant absolutely, as they had the power to do, and were directed to do under the Act, as to all persons who were in

actual possession of property under grants from the Spanish or French governments prior to December 20, 1803. Brashear remained in possession of the land, claiming the whole of the island as owner, until he died, in 1860. After his death the property passed into the possession and ownership of his heirs. On April 24, 1869, "Belle Isle" was sold, together with other property, by the United States marshal for the District of Louisiana, to one W. B. Lawrence under a writ of *fi. fa.* issuing from the Circuit Court in the case of Warfield and others v. Heirs of Walter Brashear, and on April 30th the marshal executed his deed for the same in due form. Under this deed Lawrence went into possession of the island and remained in possession thereof until July 20, 1892, when he sold to one R. B. Withers, who went into possession and held it as owner, in person or by his tenants, until May 15, 1897, when he
167 sold it to G. A. Dorwin. A. F. Lucas, who under a contract with Withers had an interest in the mineral rights of the island, sold his interest to Dorwin by a deed dated May 17, 1897. Withers made his home on the island and was living there with his wife when Dorwin bought. Dorwin went into possession of the whole island and lived there, conducting borings and examinations for minerals. On March 31, 1898, he sold the whole of the island to the defendant company, who went into possession thereof.

McCORMICK, Circuit Judge, after stating the case as above, delivered the opinion of the court.

The assignment of errors presents substantially but two propositions for our consideration, the first of which is, that the United States did not part with its title to the land sued for herein until the issuance of its patent to the plaintiffs' ancestor in 1878, and there had been no prior severance of said land or property from the public domain. Second, that the court erred in holding that the defendant or any of the authors of its title had held or enjoyed such possession of the said land or property as is or would be sufficient to support or acquire a title to the same, under the Civil Code of Louisiana, by prescription or adverse possession; that the only claim of right under which said property was ever at any time held by any of the persons upon whose supposed title or possession the defendant relies was to such right, title and interest as may have been had in
168 said property by the vendor or author from whom the several parties in question purchased; that a party who owned such a title does not possess as owner, and hence his possession is not sufficient to operate a title by prescription, however long may be its duration, and that the court erred in not so holding; and that under the whole of the evidence and testimony

offered and introduced on the trial of the cause the defendant could not maintain its claim to title by the prescription of 10 years established by the Civil Code of Louisiana.

As is shown in the foregoing statement of the case, the plaintiffs' title had its origin in the Spanish grant made in 1783, and from a careful consideration of the treaty of cession from France to the United States of the Louisiana Territory, and of the different sections of the act of March 3, 1807, respecting claims to lands in the territories of Orleans and Louisiana (2 Stat. at Large, p. 440), and of the preamble and section 1 of the act of April 29, 1816 (3 Stat. at Large, p. 328), it may well be doubted whether the land claimed by the plaintiffs in error ever belonged to the United States or that the title thereto was ever in the United States in the sense now suggested by the plaintiffs in error. But however that may be, it seems clear to us that by the act of 29th of April, 1816, the preamble and the first section of which in effect say of the claim of these plaintiffs that their title and claim to the land "be and the same are
169 hereby confirmed;" and the provision of the third section is: "that in all cases not provided for by law for patent certificates to issue, every person, and the legal representative of every person, whose claim to a tract of land is confirmed by this or any former act, and who has not already obtained a patent certificate for the same, shall, whenever his claim shall have been located and surveyed according to law, be entitled to receive from the register of the land office at Opelousas, in the State of Louisiana, * * * a certificate stating that the claimant is entitled to a patent for such tract of land by virtue of this act;" that by the survey of the land embraced in the plaintiffs' claim, duly made by authorized surveyors, and approved on August 1, 1838, by H. T. Williams, surveyor general of Louisiana, and an authenticated plat of the land as thus surveyed having been approved by the surveyor general on December 8, 1842, at this last date, if not before, the full title to the land in question became vested in the grantees, and the patent when issued upon the same survey, more than thirty years thereafter, added nothing to their right, and served only as more convenient evidence of the title already and long theretofore held by them. There is no substantial conflict in the testimony that those under whom the defendant holds have had continuous, exclusive possession of the land involved in this suit, and embraced in the plaintiffs' title, from some time in the year
170 1827 to June 30, 1898, the date of the filing of this suit. Therefore the defendant's claim of title under the prescription of 30 years is clearly and fully established, and justified and required the trial judge to give the peremptory instruction directing the jury to find for the defendant.

Here our consideration of this case might, and probably should, close; but as we have considered the other proposition involved in the assignment of errors, we may be allowed to observe that the deed of the 25th of July, 1809, by the judge of the parish court of Attakapas describes the land which had been seized to be "all that tract or parcel of land known by the name of 'Belle Isle,' situated near the mouth of the Atchafalaya, in the parish aforesaid;" and the granting-clause declares that the grantor does, in consideration of the premises recited, "grant, bargain, sell, assign and set over to the said John N. Kershaw, his heirs and assigns, all the above described tract or parcel of land, situated as aforesaid, containing the whole island of 1500 acres, more or less," etc.; and the deed from Kershaw to Johnson also declares that the grantor "hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said Henry Johnson, his heirs and assigns, all that certain tract of land called the island of 'Belle Isle,' situated near the mouth of the river Atchafalaya, in the parish aforesaid, containing
171 1500 acres, more or less, together with all the appurtenances and advantages whatsoever, thereunto belonging or in any wise appertaining . . . And the said John N. Kershaw, for himself and his heirs, the said tract or parcel of land, and every part thereof, against him and his heirs, and against every other person or persons whatsoever, to the said Henry Johnson, his heirs and assigns, will forever warrant and defend." Under these deeds Walter Brashear held when, on the 1st day of May, in the year 1822, the heirs of Gonsoulin and others brought suit against him in the district court of the fifth district parish of St. Mary's, in which they "represent that, notwithstanding their right and title to the said land, a certain Walter Brashear, of the Parish of St. Mary, had entered upon the said tract of land and taken possession of the same." After the death of Walter Brashear, under the judgment against his heirs rendered by the circuit court for the District of Louisiana, fieri facias duly issued and was levied upon the property of the estate of Walter Brashear, including the land in controversy, and was duly sold and conveyed by the marshal for the District of Louisiana to Robert B. Lawrence as the purchaser, the deed being in the due and customary form for judicial sales, and expressing "that I, the said marshal, in consideration of the premises, and by virtue of the law in such case made and provided, do sell and transfer the said above-described property (with the exception above noted) to the said Robert B.
172 Lawrence," etc. These conveyances appear to us to undertake to pass the land itself, or all property in the land, to the grantees, and cannot, in reason, or as we read them in the light of the Louisiana decisions, be held to be in any sense quit-

claim deeds or such as are not translative of property and not adequate to support the claim of the 10 years limitations provided by the laws of Louisiana. If these deeds are conveyances translative of property such as, with proper proof of possession, will support the claim under the ten years' statute of limitations, the defendant's claim under that statute is abundantly made out, and thereby the peremptory instruction given by the trial judge was also not only justified but required.

Finding no error in the judgment of the Circuit Court, it is affirmed.

173 United States Circuit Court of Appeals.
For the Fifth Circuit.

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing 173 pages, numbered from A to 172, inclusive, contain a true copy of the record, assignment of errors and all proceedings in the case, including the opinion of the court, except that the original maps filed with the record are not copied therein, but are held in my custody subject to the order of the court, in the case of Heirs of Gonsoulin, versus The Gulf Company, No. 1131, as the same remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 27th day of May, A. D. 1903.

United States Circuit Court of Appeals, Fifth Circuit.

[Seal.] CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

174 United States of America, ss.

The President of the United States:

To the Honorable, the Judges of the Circuit Court of Appeals of the United States, Fifth Circuit—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which in the said Circuit Court of Appeals, Fifth Circuit, before you, or some of you, between Fernand Bonin, Valcour Bonin, Ovignac Bonin, Amanthe Toffier, widow, Mathilde Broussard, widow, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel, and Joseph

Dressel, her husband, Azelie (or Erzalie) Bonin, wife of Leon Pallud (or Pavy) and Leon Pallud (or Pavy), her husband, Arsene Bonin, wife of Ulienor Dugas, and Ulienor Dugas, her husband, Corinne Breaux, wife of Aurelian Breaux, and Aurelian Breaux, her husband, Despany Broussard, father of Edward Despany, Jules Duperon, Pierre and Amelie Broussard, Nannie Bonin, wife of Amadie Gerois and Madaie Gerois, her husband, Arthur Gibson, Emily Gibson wife of Ceasar DeBlanc and Caesar DeBlanc her husband, Clemence Boutte, widow of Leo Decou and of Leo Decou, her husbabd, Clelie Berard, widow of Marshall Bonin, Alcee Boutte, Alphone Boutte, Alphonsine Boutte, wife of Oscar Gonsoulin, and Oscar Gonsoulin, her husband, Fernand Garret, John G. Boutte, Emily Boutte, wife of John Langlois, and John Langlois, her husband, Corinne Boutte, wife of Jules Etie, and Jules Etie, her husband, Walter Boutte, Arthur Boutte, Edgar Boutte, Paul Boutte, by their natural tutrix Ora Harry Boutte, widow and natural tutrix of her said minor children, Gaston Boutte, Sidney Boutte, represented by their mother widow Alcide Boutte, Laura Boutte, wife of Policarp Borel and Policarp Borel her husband, Louise Boutte, wife of Walter Harry, and Walter Harry her husband, Louise Boutte, Nemours Megues, Emily Boutte, wife of John Roland, and John Roland her husband, Paul Boutte, Mary Boutte, widow of P. D. Tatman, Frank Boutte, Joseph R. Boutte, Charles Boutte, Edmond Boutte, Oscar Boutte, May Boutte, wife of George Sheard and George Sheard, her husband, Alexander Boutte, Aristide Boutte,
175 Laura Boutte, wife of Similian Rodrigues, and Similian Rodrigues, her husband, Marie Bouzique, Frank Boutte, William Boutte, Henry Boutte, Hary Boutte, Cora Boutte, wife of M. L. Keller, and M. L. Keller, her husband, Blanche Boutte, Blanche Boutte, wife of Garcia Romero, and Garcia Romero, her husband, Marie Boutte, wife of Charles Espinar, and Charles Espinar, her husband, T. Fere Herbert and Tontant Herbert by their father and natural tutor Ovide Herbert, Paul Boutte, Ada Boutte, Marie Boutte, represented by their mother and natural tutrix Zoe Robichaux Boutte, Olympe Boutte, wife of August Delpit, and August Delpit, her husband, Blanche Boutte, wife of Charles Delpit and Charles Delpit, her husband, Clara Boutte, wife of Charles Durant, and Charles Durant, her husband, Albert Boutte, Edward Boutte, Celina Boutte, wife of H. Gerois and H. Gerois her husband, Edward Boutte, Celina Boutte, wife of A. Romero, and A. Romero, her husband, Elizabeth Coralie Boutte, wife of Clerville T. Patin, and Clerville T. Patin, her husband, Angel Castello, widow of Buillard, Mathilde Castello, wife of Emile Landry, and Emile Landry, her husband, George Greigg, Louis Greigg, Agelice

Greigg, wife of H. Clair Dugas, and H. Clair Dugas, her husband, Henry Greigg, George Greigg, Adeline Greigg, Etta Greigg, Agatha Greigg, Mary Himel, Rosa Himel, wife of M. D. Dalferes and M. D. Dalferes, her husband, Corinne Himel, Olympe Himel, Rosa Greigg DeBlanc, widow of Ralph DeBlanc, John Greigg, Carlos Greigg, Mathilde Castello, wife of Emile Landry, and Emile Landry her husband, Angel Castello, widow of August Baillard; Euphemie Gonsoulin, wife of Gaston Gerois and Gaston Gerois her husband, Eugenie Gonsoulin, wife of Edmond Gonsoulin, and Edmond Gonsoulin, her husband, Joseph Gonsoulin, Numa Gonsoulin, Celemar Gonsoulin, wife of Edward Nero and Edward Nero her husband, Oscar Gonsoulin, Dupre Gonsoulin, Louise Gonsoulin, wife of Albert Levert and Albert Levert her husband, Sidney Gonsoulin, Mathilda Gonsoulin, wife of Sosthene Breaux, and Sosthene Breaux, her husband, Dorsienne Gonsoulin, wife of Jules Grivat, and Jules Grivat her husband, Charles Fontelieu, Albert Fontelieu, Pauline (or Polain) Fontelieu, Annette Fontelieu, Natalie Gonsoulin, wife of Euselie Zeleu, and Euselie Zeleu her husband, Erzelie Gonsoulin, widow of Octave Boutte, Marie Gonsoulin,
176 wife of Selomer Solomon, and Selomer Solomon her husband, Joé Gonsoulin, Leocadie Gonsoulin, wife of John Broussard, and John Broussard, her husband, Alcide Gonsoulin, Adrien Gonsoulin, St. Clair Dugas, Alida Dugas, wife of Eugene Verret, and Euegen Verret, her husband, Herzalie Gonsoulin, wife of H. Maurice Prevost, and H. Maurice Prevost, her husband, Anatole Gonsoulin, Fernand Gonsoulin, Eva Gonsoulin, wife of Damas Moresi, and Damas Moresi, her husband, Alfred Gonsoulin, Jr., Sidney Gonsoulin, Corinne Gonsoulin, the last three minors represented by their natural tutrix Suzette Gonsoulin, Eva Labau, represented herein by her father and natural tutor, Gorge Labau, Aminthe Bienvenue, widow of Dauterive Toffier, Mathilde Bienvenue, wife of Telesphore Broussard and Telesphore Broussard her husband, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joe Dressel, and Joe Dressel, her husband, Herzalie Bonin, wife of Leon Pallud and Leon Pallud, her husband, Arsene Bonin, wife of Ulienor Dugas and Ulienor Dugas, her husbabd, Corinne Bonin, wife of Aurelian Breaux, and Aurelian Breaux, her husband, Mamie Bonin, wife of Amadie Gerois and Amadie Gerois her husband, Olivia Bonin, wife of Despany Broussard and Despany Broussard, Fernand Bonin, Ovignac Bonin, Valcour Bonin, Desire Gonsoulin, Edwin Dugas, Edmond Dugas, Edward Dugas Leonce Dugas, Marie Louise Dugas, wife of Henry Lee Dugas, and Henry Lee Dugas her husband, Homer Gonsoulin, Esulie Gonsoulin, Luzin Gonsoulin, Robert F. Broussard, Albert Broussard, Louis Broussard, Edwin Broussard, Blanche

Broussard, wife of Prestin Guilbeau and Prestin Guilbeau her husband, Marie Broussard, wife of Richard Steckler and Richard Steckler, her husband, Celina Gonsoulin, wife of Valiere Dauterive, and Valiere Dauterive, her husband, Joe Gonsoulin, Leocadie Gonsoulin, wife of John Broussard, and John Broussard her husbabd, Marie Gonsoulin, wife of Fernand Solomon and Fernand Solomon her husband, Helena Gonsoulin, wife of Victor Lebauve and Victor Lebauve her husband, plaintiffs in the Circuit Court and plaintiffs in error in the Circuit Court of Appeals, and The Gulf Company defendant in the Circuit Court and defendant in error in the Circuit Court of Ap-
177 peals, a manifest error hath happened, to the great damage of the said Fernand Bonin, Valcour Bonin, and others, above named, plaintiffs in the Circuit Court and plaintiffs in error in the Circuit Court of Appeals, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings, aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, District of Columbia, within thirty days from the date hereof, in the said Supreme Court of the United, to be then and there held, and the record and proceedings aforesaid, being inspected, the said Supreme Court of the United States, may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22 day of May in the year of our Lord one thousand nine hundred and three.

United States Circuit Court of Appeals, Fifth Circuit.

[Seal] CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

Allowed by: David D. Shelby, United States Circuit Court, May 22, 1903.

178 [Endorsed:] No. 1131. U. S. circuit court of appeals, fifth circuit. Heirs of Gonsoulin, *vs.* The Gulf Company. Writ of error. Filed 25 day of May 1903. Charles H. Lednum clerk of the United States circuit court of appeals. Branch K. Miller, attorney for plaintiffs in error.

179 The United States of America.

Circuit Court of Appeals of the United States,
Fifth Circuit.

The President of the United States.

To the Gulf Company—Greeting:

You are hereby cited and admonished to be and appear at The Supreme Court of the United States, to be holden at the City of Washington, D. C., within thirty days from date hereof, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of Appeals of the United States, Fifth Circuit, wherein Fernand Bonin, Valcour Bonin, Ovignac Bonin, Amanthe Toffier, widow, Mathild Broussard, widow, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joseph Dressel, and Joseph Dressel, her husband, Azelie (or Erzalie) Bonin, wife of Leon Pallud (or Pavy) and Leon Pallud (or Pavy), her husband, Arsene Bonin, wife of Ulienor Dugas and Ulienor Dugas, her husband, Corinne Breaux, wife of Aurelian Breaux, and Aurelian Breaux, her husband, Despany Broussard father of Edward Despany, Jules Duperon, Pierre and Amelia Broussard, Nannie Bonin, wife of Amadie Gerois, and Amadie Gerois, her husband, Arthur Gibson, Emily Gibson, wife of Ceasar DeBlanc, and Ceasar DeBlanc, her husband, Clemence Boutte, widow of Leo Decou and of Leo Decou her husband, Clelie Berard, widow of Marshall Bonin, Alcee Boutte, Alphonse Boutte, Alphonsine Boutte, wife of Oscar Gobsoulin, and Oscar Gonsoulin, her husband, Fernand Garrett, John G. Boutte, Emily Boutte wife of John Langlois, and John Langlois her husband, Corinne Boutte, wife of Jule Etie, and Jules Etie her husband, Walter Boutte, Arthur Boutte, Edgar Boutte, Paul Boutte, by their natural tutrix Ora Harry Boutte, widow and natural of her said minor children, Gaston Boutte, Sidney Boutte, represented by their mother Widow Alcide Boutte, Laura Boutte, wife of Policarp Borel and Policarp Borel her husband, Louise Boutte, wife of Walter Harry and Walter Harry her husband, Louise Boutte, Nemours Mugues, Emily Boutte, wife of John Roland and John Roland her husband, Paul Boutte, Mary Boutte, widow of P. D. Tatman, Frank Boutte, Joseph R. Boutte, Charles Boutte, Edmond Boutte, Oscar Boutte,
180 May Boutte, wife of George Sheard, and George Sheard her husband, Alexander Voutte, Aristide Boutte, Laura Boutte, wife of Similian Rodrigues and Similian Rodrigues her husband, Marie Bouzique, Frank Boutte, William Boutte, Henry Boutte, Hardy Boutte, Cora Boutte, wife of M. L. Kel-

ler and M. L. Keller her husband, Blanche Boutte, Blanche Boutte, wife of Garcia Romero, and Garcia Romero, her husband, Marie Boutte, wife of Charles Espinar and Charles Espinar her husband, T. Frere Herbert and Tontant Herbert by their father and natural tutor Ovide Herbert, Paul Boutte, Ada Boutte, Marie Boutte, represented by their mother and natural tutrix Zoe Robichaux Boutte, Olympe Boutte, wife of August Delpit and August Delpit her husband, Blanche Boutte, wife of Charles Delpit and Charles Delpit her husband, Clara Boutte, wife of Charles Durant, and Charles Durant her husband, Albert Boutte, Edward Boutte, Celina Boutte, wife of H. Gerois, and H. Gerois her husband, Edward Boutte, Celina Boutte, wife of A. Romero, and A. Romero, her husband, Elizabeth Coralie Boutte, wife of Clerville T. Patin, and Clerville T. Patin her husband, Angel Castello, widow of Buillard, Mathilde Castello, wife of Emile Landry, and Emile Landry her husband, George Greigg, Louis Greigg, Agelice Greigg, wife of H. Clair Dugas, and H. Clair Dugas, her husband, Henry Greigg, George Greigg, Adeline, Etta Greigg, Agatha Greigg, Mary Himel, Rosa Himel, wife of M. D. Dalferes, and M. D. Delferes, her husband, Corinne Himel, Olympe Himel, Rosa Greigg, De Blanc, widow of Ralph DeBlanc, John Greigg, Carlos Greigg, Mathilde Castello, wife of Emile Landry and Emile Landry her husband, Angel Castello, widow of August Baillard, Euphemie Gobsoulin, wife of Gaston Gerois and Gaston Gerois, her husband, Eugenie Gonsoulin, wife of Edmond Gonsoulin, and Edmond Gonsoulin, her husband, Joseph Gonsoulin, Numa Gonsoulin, Celemar Gonsoulin, wife of Edward Nero and Edward Nero her husband, Oscar Gonsoulin, Dupre Gonsoulin, Louise Gonsoulin, wife of Albert Levert, and Albert Levert, her husband, Sidney Gonsoulin, Mathilde Gonsoulin, wife of Sosthene Breaux, and Sosthene Breaux, her husband, Dorsienne Gonsoulin, wife of Jules Grivat, and Jules Grivat, her husband,
Charles Fontelieu, Albert Fontelieu, Pauline (or Po-
181 lain) Fontelieu, Annette Fontelieu, Natalie Gonsoulin,
wife of Euselie Zeleu, and Euselie Zeleu, her husband, Erzelie Gonsoulin, widow of Octave Boutte, Marie Gonsoulin, wife of Selomer Solomon, and Selomer Solomon, her husband, Joe Gonsoulin, Leocadie Gonsoulin, wife of John Broussard, and John Broussard, her husband, Alcide Gonsoulin, Adrien Gonsoulin, St. Clair Dugas, Alida Dugas, wife of Eugene Verret, and Eugene Verret, her husband, Herzalie Gonsoulin, wife of H. Maurive Prevost, and H. Maurice Prevost, her husband, Anatole Gonsoulin, Fernand Gonsoulin, Eva Gonsoulin, wife of Damas Moresi, and Dmas Moresi her husband, Alfred Gonsoulin, Jr., Sidney Gonsoulin, Corinne Gonsoulin, the last three

minors represented by their natural tutrix Suzette Gonsoulin, Eva Labau, represented herein by her father and natural tutor George Labau, Aminthe Bienvenue, widow of Dauterive Toffier, Mathilde Bienvenue, wife of Telesphore Broussard and Telesphore Broussard, her husband, Edgar Bonin, Albert Bonin, Olympe Bonin, wife of Joe Dressel, and Joe Dressel, her husband, Herzalie Bonin, wife of Leon Pallud, and Leon Pallud, her husband, Arsene Bonin, wife of Ulienor Dugas and Ulienor Dugas, her husband, Corinne Bonin, wife of Aurelian Breaux, and Aurelian Breaux, her husband, Mamie Bonin, wife of Amadie Gerois and Amadie Gerois her husband, Olivia Bonin, wife of Despany Broussard, and Despany Broussard, her husband, Fernand Bonin, Ovignac Bonin, Valcour Bonin, Desire Gonsoulin, Edwin Dugas, Edmond Dugas, Edward Dugas, Leonce Dugas, Marie Louise Dugas, wife of Henry Lee Dugas, and Henry Lee Dugas, her husband, Homer Gonsoulin, Euselie Gonsoulin, Luzin Gonsoulin, Robert F. Broussard, Balnche Broussard, wife of Prestin Guilbeau, and Prestin Guilbeau, her husband, Albert Broussard, Louise Broussard, Edwin Broussard, Marie Broussard, wife of Richard Steckler, and Richard Steckler her husband, Celina Gonsoulin, wife of Valiere Dauterive, and Valiere Dauterive, her husband, Joe Gonsoulin, Leocadie Gonsoulin, wife of John Broussard, and John Broussard, her husband, Marie Gonsoulin, wife of Fernand Solomon and Fernand Solomon her husband, Helena Gonsoulin, wife of Victor Lebauve, and Victor Lebauve her husband, are plaintiffs in error, and The Gulf Company is defendant in error, to
182 show cause, if any there be, why the judgment rendered against the said Fernand Bonin, Valcour Bonin and the others, above named plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable, Melville W. Fuller, Chief Justice of the United States, this 22 day of May in the year of our Lord one thousand nine hundred and three.

DAVID D. SHELBY,
United States Circuit Judge.

Before the undersigned authority this day, personally came and appeared J. H. Patin, Deputy United States Marshal for the Eastern District of Louisiana, known to me as such who being duly sworn deposes and says that on the 27th day of May, 1903, affiant served this writ on "The Gulf Company" by handing same to its attorney of record, Mr. E. H. Farrar, in person, in the City of New Orleans, Louisiana.

J. H. PATIN,
Deputy United States Marshal.

Sworn to and subscribed before me on this 28th day of May, 1903.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

183 [Endorsed:] Original. No. 1131. U. S. circuit court of appeals, fifth circuit. Heirs of Gonsoulin, *vs.* The Gulf Company. Citation. Filed 28 day of May 1903. Charles H. Lednum clerk of the United States circuit court of appeals. Branch K. Miller, attorney for plaintiffs in error.

Endorsed on cover: File No. 18956. U. S. circuit court of appeals, 5th circuit. Term No. 50. Fernand Bonin, Valcour Bonin, *et al.*, plaintiffs in error, *vs.* The Gulf Company. Filed June 1, 1903. File No. 18956.

(18,956.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 50.

FERNAND BONIN ET AL., PLAINTIFFS IN ERROR,

vs.

THE GULF COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Map representing the survey of tract of land made in conformity with report No. 33, issued by the commissioners of the western district of Louisiana in favor of Dautrieve Dubuclet *et al.* (See p. 69 of record.)	5	3
Map representing the survey of tract of land made in conformity with report No. 33, issued by the commissioners of the western district of Louisiana in favor of Dautrieve Dubuclet *et al.* (See p. 101 of record.)	6	4
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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 28, 1904.

1 Supreme Court of the United States.

FERNAND BONIN ET AL., Plaintiffs in Error,
vs.
THE GULF COMPANY, Defendant in Error.
} No. 50, October Term, 1904.

Whereas, in the case of Fernand Bonin, Valcour Bonin *et al.*, plaintiffs in error, *vs.* The Gulf Company, defendant in error, No. 50 October term, 1904, Supreme Court of the United States, there is a diminution of the record, because the transcript of the record in this cause does not contain,

1. The plat representing the survey of a tract of land made in conformity with report No. 33 issued by the commissioners of the western district of Louisiana, in favor of Dauterive Dubuclet, Benoist De St. Clair, and Francois Gonsoulin, contained in the patent of the United States issued to said parties, being the same plat mentioned and described on page 69 of the original printed record of said cause, in this court, and transmitted in original from the circuit court of the United States for the eastern district of Louisiana, to the circuit court of appeals of the United States, fifth circuit, holding session in New Orleans; also,

2. The plat representing the survey of a tract of land made in conformity with report No. 33 issued by the commissioners of the western district of Louisiana, in favor of Dauterive Dubuclet, Benoist De St. Clair and Francois Gonsoulin, filed by defendant, November 12, 1901, being the same plat representing a survey of the tract of land mentioned and described on page 71 of the original printed record of this cause, in this court; also,

3. Map in the office of the surveyor general of the United States for the State of Louisiana, of township 17, south range 10 east, and township 18, south range 11 east, as is shown on page 103 of the original printed record of this cause, in this court, and being the same mentioned on page 106 of said record; also,

4. The plat representing the survey of a tract of land made in conformity with report No. 33 issued by the commissioners
2 of the western district of Louisiana, in favor of Dauterive Dubuclet, Benoist De St. Clair, and Francois Gonsoulin, being contained in the patent of the United States issued to said parties for said land, and being the same plat mentioned on page 101 of the original printed record of this cause, in this court.

Now, therefore, the clerk of the United States circuit court of appeals, fifth circuit, at New Orleans, to which court at which place, the writ of error in the said cause is prosecuted has made true and correct copies of the originals of said maps, plans and notes of survey, transmitted to said court in original from the circuit court of the United States for the eastern district of Louisiana, and has certified the same to be correct, in accordance with law, and prepared

the same as an amended or a supplemental record of the writ of error herein sued out,

It is, therefore, stipulated and agreed that the said copies of said maps, plans and notes of survey, transmitted in original from the said circuit court, to the said circuit court of appeals, holding session in New Orleans, certified according to law, by the clerk of said circuit court of appeals, shall be filed in the above numbered and entitled cause, in this court, as an amendment, supplement or enlargement of the original transcript of the proceedings in said circuit court of appeals, and as such, shall be taken, considered and construed in all respects as a completion of the record in this cause, in the same manner and to the same extent, as though this court, on application, had issued its certiorari to supply a diminution of the record herein and received a proper return to the same.

N. O. Sept. 24th 1904.

EDGAR H. FARRAR,
B. F. JONAS,
ERNEST B. KRUTTSCHNITT,
Counsel for Gulf Co., Def't in Error.
DAVID TODD,
BRANCH K. MILLER,
Attorneys for Ferdnand Bonin et als., Plaintiffs in Error.

3 This large map is the one described in the defendant's note of evidence on page 103 as containing the field notes of A. F. Rightor and Andrew McCollum, deputy surveyors, etc., and is the same map which is mentioned on page 106 of the original printed record of the case of Ferdnand Bonin, Calcour Bonin, *et al.*, plaintiffs in error, *vs.* The Gulf Company, in the Supreme Court of the United States, No. 50, October term, 1904.

(Here follows map marked page 4.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

(Here follows map marked page 5.)

5 The above and foregoing is a true and correct copy of the plat representing the survey of tract of land made in conformity with report No. 33 issued by the commissioners of western district of Louisiana, in favor of Dautrieve Dubuclet, Benoist de St. Clair and Francois Gonsoulin, brought up to the court of appeals in original, and for this reason omitted from the transcript of the record of this case heretofore made, this copy being forwarded to supply the omission in the original transcript of record.

The above is a true and correct copy of the plat mentioned and referred to on page 69 of the original printed record of Ferdnand Bonin, Valcour Bonin, *et al.*, plaintiffs in error, *vs.* The Gulf Company, No. 50 on the docket of the Supreme Court of the United States, October term, 1904.

(Here follows map marked page 6.)

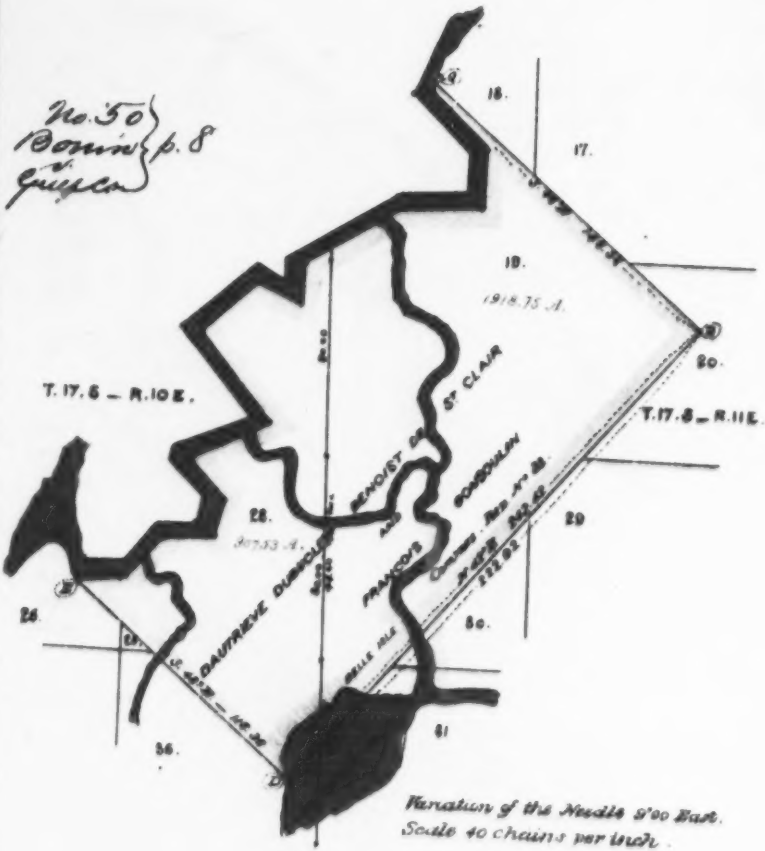
6 The above and foregoing is a true and correct copy of the plat representing the survey of the tract of land made in conformity with the report No. 33 issued by the commissioners of the western district of Louisiana, in favor of Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin, and is the same plat which is mentioned on page 101 of the original printed record of the case of Ferdnand Bonin, Valcour Bonin, *et al.*, plaintiffs in error, *vs.* The Gulf Company, No. 50 of the docket of the Supreme Court of the United States, October term, 1904, and having been omitted from the transcript.

7 The foregoing has the following endorsements, to-wit:

Identified with bill of exceptions No. 1 in Heirs of Gonsoulin vs. Gulf Co. # 12760 U. S. circuit court, eastern district of Louisiana, *nunc pro tunc* as of November 13th, 1901. Charles Parlange, U. S. judge. No. 19. original. Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin. Comm'rs' rep't No. 33. Sec. 28 T. 17 S. R. 10 E. sec. 19 T. 17 S. R. 11 E. South western district Louisiana. 2,826.28 acres. Duplicate handed to Mr. Thos. Tally April 26/78 No. 12760 Filed Nov. 12, 1901, H. J. Carter, deputy clerk. No. 1131. Ex. (3) U. S. circuit court of appeals Filed Mar. 5, 1902, Charles H. Lednum, clerk.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

No. 50
Bonin
Guyon
p. 8


18.
17.
19.
1918.75 A.
20.
T. 17. S. – R. 10 E.
T. 17. S. – R. 11 E.
ST CLAIR
28.
29
30.
31
26.
25.
36.
1918.75 A.
1918.75 A.
1918.75 A

(Here follows map marked page 8.)

8 The above and foregoing is a true and correct copy of the original plat of survey of the tract of land made in conformity with report No. 33 made by the commissioners of the western district of Louisiana, in favor of Dautrieve Dubuclet, Benoist De St. Clair and Francois Gonsoulin, brought up to court of appeals from the circuit court in the original, this being the same plat of survey mentioned on page 71 of the original printed record in case of Fernand Bonin, Valcour Bonin, et al., plaintiffs in error, vs. The Gulf Company, No. 50 on the docket of the Supreme Court of the United States, October term, 1904.

9 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that attached hereto are true and perfect copies of certain maps, field notes and copies, which were transmitted in their respective originals, by agreement of the parties to this court at the time of, and in connection with, the presentation of the writ of error from this court to the United States circuit court for the eastern district of Louisiana, in cause No. 1131, Heirs of Gonsoulin *vs.* The Gulf Company, the foregoing copies being prepared as a supplemental record to the writ of error heretofore sued out in said cause, and which is now pending in the Supreme Court of the United States.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 23rd day of September, A. D. 1904.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Endorsed on cover: File No. 18,956. Supreme Court of the United States, October term, 1904. Term No. 50. Fernand Bonin *et al.*, plaintiffs in error, *vs.* The Gulf Company. Stipulation of counsel and addition to record. Filed September 26th, 1904. File No. 18,956.

FILE COPY.

Office Supreme Court U. S.
FILED
FEB 17 1905
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 50.

FERNAND BONIN, VALCOURT BONIN, ET AL.,
PLAINTIFFS IN ERROR,

vs.

THE GULF COMPANY.

NOTICE.

To Messrs. FARRAR, JONAS AND KRUTTSCHNITT,
Attorneys for the Gulf Company:

Please take notice that after due delay for this notice and on or before Monday, the 6th day of March, 1905, and on a Monday, at the opening of court, the petition for a certiorari, a copy of which is served herewith, will be submitted to the Supreme Court of the United States for the decision and action of said court.

BRANCH K. MILLER,
DAVID TODD,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 50.

FERNAND BONIN, VALCOURT BONIN, ET AL.,
PLAINTIFFS IN ERROR,

vs.

THE GULF COMPANY.

Petition for Certiorari to the United States Circuit Court of Appeals, Fifth Circuit.

To the Honorable the Supreme Court of the United States:

The petition of Fernand Bonin, Valcourt Bonin, *et al.*, plaintiffs in error in this case, whose names in full are duly set out in the several petitions in the record, respectfully shows:

That this suit of the heirs of Francois Gonsoulin is a petitory action commenced in the State court of Louisiana (twenty-fourth judicial district) for certain lands, alleged as granted to their ancestor, &c., along with others from whom this ancestor acquired title, "originally a grant from the "Spanish government during the time when Louisiana "formed a part of the dominion of Spain in America—all "said grantees then residing in the province of Louisiana

"* * * that a patent issued from the Government of the "United States after *due recognition* of their (grantees') rights "by the Commissioners of the Land Office of the United "States; that the rights of the heirs (petitioners) were recog- "nized in the Commissioners' reports of the year 1875; "that their concession, covering said land, dates back to the "year 1783 and said concession was recognized and was con- "firmed by the United States after *legal surveys* had segre- "gated and defined said grants; that the land was illegally "detained by the Gulf Co. corporate under the laws of New "Jersey; that petitioners should be declared owners of the "lands (worth twenty-five thousand dollars) and be placed "in possession."

They pray for citation on the Gulf Company by curator, and on any person occupying said land, for judgment for the land, and for necessary writ of possession.

The Gulf Company appeared, through their attorneys, in the 24th district court (State court) aforesaid, in a motion to remove the case to the circuit court of the United States; alleging the defendant corporation to be a resident of New Jersey, and that the heirs, plaintiffs, were residents of Louisiana, and alleging further that the suit was to eject defendants, and that the United States circuit court for the eastern district of Louisiana *has original jurisdiction* of this cause under the statutes of the United States.

The case was removed to the United States circuit court July 30, 1898.

An amended petition was filed by the plaintiffs in the United States circuit court on May 29, 1900, in which a majority of the persons suing (coheirs) joined in the suit, and further details of title claimed were set out, to wit: That letters patent to the said land had been granted to the land sued for as the island of Belle Isle, and that the patent or grant constituted a title to the lands in suit valid and binding, as against all parties, and that the agent of the Gulf

Company in St. Mary parish, where the land was situate, was empowered to receive citation and stand in judgment.

There were pleas of prescription of ten years and thirty years and of *res adjudicata* filed by defendant.

In the plea of thirty years' prescription it was stated that the defendant had held possession of the land for one hundred years, or before the United States acquired the territory.

In the last plea it was set out that the State court of Louisiana had decided, in 1822, that the United States had never held any title to the lands in question which could be conveyed by it to plaintiffs' ancestors or to anybody.

On trial upon these issues the jury, under instructions, found in favor of the defendant on the plea of prescription and against it on the plea of *res adjudicata*, and there was judgment accordingly December 11, 1901. On application a writ of error was granted plaintiffs in error to the United States circuit court of appeals for the fifth circuit January 28, 1902.

The assignment of errors by plaintiffs, among other matters, asserts that "the United States did not part with its title for the land sued for herein until the patent issued to plaintiffs' ancestors in 1878; that there had been no prior severance of the land or property from the public domain;" and again, that there was error in holding "that defendant or the authors of its title had held or enjoyed such possession of said land or property as to support or acquire a title by prescription, and that a party holding adverse possession of such land does not acquire by prescription any part of it; that the court erred in declaring that there had been, prior to 1878, any survey by proper officers which had the effect of separating the "concession" claimed from the public domain and making it *private property*, and that the court should have instructed the jury that a patent from the United States should have prevailed over any and all other titles purporting to be derived from the United States, and

that the legal title remained in the United States till the issuance of the patent, and that the latter conveyed the legal title to the patentees and plaintiffs, the lawful heirs, and that there was error in holding that there could be adverse possession in the authors of defendant's title prior to the issuance of the patent of the United States, and such posssession prior to the patent would constitute a trespass.

The United States circuit court of appeals on May 27, 1902, affirmed the judgment of the circuit court. The opinion of the said court of appeals, in setting out the issues, states: "It was shown on trial that the land in dispute "was granted in 1783 by the Spanish government to the "ancestors of plaintiffs. On May 2nd, 1763, Governor Miro, "of the Spanish colony of Louisiana, issued an order of sur- "vey directing the surveyor general to put Francois Gonson- "lin and associates (authors of plaintiffs' title) in possession "of an island called Belle Isle."

"The claim founded on this order was under act of Con- "gress March 13, 1807, presented to the board of commission- "ers, &c., and was by them recognized, &c."

Proceeding to the discussion of the questions of prescription, *acquirendi causa*, set up by the defendant in error, the opinion sets out: "The plaintiffs' title had its origin in the "Spanish grant made in 1783, and from a careful consider- "ation of the treaty of cession from France to the United "States of the Louisiana Territory, and of the different sec- "tions of the act of March 3rd, 1807, respecting claims to "lands in * * * Louisiana, sec. 1, act of Ap'l 29th, 1816 "(3 Stat. at Large, p. 328), it may well be doubted whether "the land claimed by the plaintiffs in error *ever belonged to "the United States*, or that the title thereto was ever in the "United States in the sense now suggested by the plaintiffs "in error, &c."

And, predicated on these statements and conclusions, the judgment affirmed the judgment of the circuit court.

From this judgment a writ of error was taken to the Su-

preme Court of the United States May 22, 1903, and filed May 25, 1903, and in the assignment of errors it was alleged that the court erred in holding that the plaintiffs in error herein acquired any title under the grant herein or through confirmation of same by act of Congress by approval of the survey of 1842 described in the record.

2d. That the court erred in holding that the patent which was issued (upon the claim of the grantees) August, 1878, was not the first severance of the property from the public domain of the United States, but was merely evidence of title of plaintiffs in error.

3d. That the said circuit court of appeals erred in sustaining pleas of prescription founded upon statutes of Louisiana, and that the possession claimed by defendant was not such, nor to the extent necessary to sustain such pleas of prescription.

Your petitioners show that they consider that grave errors have been made in the decisions quoted, to their great injury and damage, and that these errors bear upon the construction given to the effects of the treaty mentioned and the laws and statutes of the United States with regard to determining the effect of anterior grants and real rights and titles to lands affected by the treaty stipulations.

Your petitioners show that the prescription claimed by the defendant could not have been acquired under the laws of the United States, as presented by them, bearing on the question of delimitation and segregation of concessions, as in the case at bar; that their inability to take and hold the concession granted them for a long period for lack of delimitation, &c., has been ignored in the decisions complained of, while the right of the adverse holders has been recognized to take and prescribe for the realty to which neither the Spanish government nor the United States had parted with title, nor put in the domain of private property, subject to private claim and ownership.

Petitioners aver that, although it does not appear that the jurisdiction of the Federal court was entirely dependent upon the opposite parties to the suit being citizens of different States, and although additional reasons for such jurisdiction to vest have been presented by defendant in error, as appears in the above relation of the pleadings, nevertheless there remain doubts as to the jurisdiction and finality of the decrees rendered, and it would greatly subserve the purpose of justice if a certiorari were ordered, to the end of a review by this honorable court of this case and the authority of the court exerted to correct the grave errors complained of by these plaintiffs in error.

Wherefore petitioners respectfully pray that if the appeal and writ of error were improvidently granted by the United States circuit court of appeals, a writ of certiorari may be issued out of and under the seal of this court, directed to the United States circuit court of appeals for the fifth circuit, commanding said court to certify and send, on a certain day to be designated, a full and complete transcript of the record and all proceedings of said circuit court of appeals, as identified by the transcript of record in the case of The Heirs of Gonsoulin *vs.* The Gulf Co., to the end that said case may be reviewed and determined by this court, as provided by section 6 of the act of Congress to establish circuit courts, &c., and to regulate the jurisdiction of the courts of the United States, approved March 3, 1891, and that your petitioners may have such other and further relief as to this court may seem meet and appropriate, and that the decree and judgments of the said United States circuit court and of the United States circuit court of appeals be reversed and set aside, and that petitioners, plaintiffs in error, have judgment and recover as they pray in their petitions and as they will ever pray, etc.

BRANCH K. MILLER,
DAVID TODD,
Attorneys.

AFFIDAVIT.

David Todd, attorney for petitioners, being duly sworn, deposes and says that the allegations of the foregoing petition are true and correct to the best of his knowledge and belief.

DAVID TODD.

Sworn to and subscribed before me this 16 day of February, A. D. 1905.

[SEAL.] JAY B. SMITH,
Notary Public, D. C.

[14805]

Supreme Court of the United States

OCTOBER TERM, 1904.

No. 50

FERNAND BONIN *ET AL.*,

PLAINTIFFS IN ERROR,

versus

THE GULF COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR PLAINTIFFS IN ERROR.

ASSIGNMENT OF ERRORS.

That plaintiffs in this action in the Circuit Court, and the plaintiffs in error in the present writ of error applied for by them, in connection with their petition for a writ of error, make the following assignment of errors, which they aver occurred in the trial and at the hearing of this cause,

in the Circuit Court of Appeals, for the Fifth Circuit, to-wit:

First—That the Court erred in holding that the plaintiffs in the Circuit Court, and plaintiffs in error herein, acquired any title under the grant herein or through confirmation of the same by an Act of Congress, by the approval of the survey of 1842, described in the record; and that the Court should have held the contrary.

Second—That the Court herein erred in holding that the patent which was issued herein upon the claim of Dauterive Dubuclet, Benoist de St. Clair, and Francois Gonsoulin, on August 21, 1878, as not the first severance of the property described, from the public domain of the United States, but was merely evidence of the title of plaintiffs in error here, or those of whom they were the legal heirs; and the Circuit Court of Appeals should have held the reverse.

Third—That the said Circuit Court of Appeals erred in sustaining the pleas of prescription of ten and thirty years founded upon the statutes of Louisiana, and the Circuit Court of Appeals also erred, particularly, in holding that the character of the possession shown by the defendant in error herein, was sufficient to sustain such pleas of prescription, or that the said possession was such as was extended to the area of the land claimed by the plaintiffs in the Circuit Court, and plaintiffs in error herein, and claimed adversely by the defendant in error herein; that in point of fact there was not such possession of such land as was required by law, nor was there such possession in point of law, which was the possession it should have been to the extent necessary to sustain such pleas of prescription; and the Circuit Court of Appeals should have held the reverse thereof.

These plaintiffs, in the Circuit Court, and plaintiffs in

error here, as errors committed in the trial and hearing of this cause in the said Circuit Court of Appeals, assign as errors the same matters which are set up and so assigned in the Assignment of Errors filed in the United States Circuit Court on January 28, 1902, and relied as errors of said Circuit Court, upon which the reversal of said judgment of the Circuit Court was sought, to-wit:

First—That the Court erred in holding that there was any divestiture of the title of the United States in favor of Walter Brashear or Samuel Watson by the confirmation obtained by the latter from the Board of Land Commissioners; that the said confirmation was made under the authority of the Act of March 3, 1807, Second Statutes at Large, p. 440; that the procedure in case of the final decision of the Board of Commissioners in favor of the claimant authorized by Section 4 did not become conclusive or effective until a copy of the said confirmation being filed in the land office, and survey and plat of the land designated in the confirmation made by the Surveyor General or the other officer acting as such, when and after which, the claimant was entitled to obtain from the Land Office a certificate of confirmation, and its registry, which, upon presentation to the Secretary of the Treasury (Interior) entitled the party to a patent; that the confirmation by the Commissioners was by the said act made to depend for its effect, and was conditioned upon a subsequent survey of the land under the authority of the United States, and until such survey was made subsequent to the confirmation, and the filing thereof in the Land Office, the confirmation was simply an inchoate title to an unlocated tract of land, and applying to no particular tract, until a survey of same was made, designating and identifying the land thereby covered, the title of the land, the subject of the confirma-

tion, remained in the United States. That Act of 1807 intended that the Commissioners should adjudge the existence of good titles to lands held under French or Spanish possessors, but not intend that a final or legal title as against the United States should be made until their bounds have been ascertained and the particular tract defined by survey.

Second—That the Court erred in holding that the *dictum* found in the opinion of the Supreme Court of Louisiana, in the case of *Gonsoulin vs. Brashear,* 5 Martin, New Series (Louisiana), page 35, "The government of the United States have relinquished their title to both," (plaintiffs and defendants), was conclusive to the effect that Brashear had at the date of that suit acquired the legal title of the United States.

Third—That the Court erred in holding that *Gonsulin vs Brashear,* 5 Martin, New Series, was *res judicata,* as concerns the title acquired by plaintiffs subsequent to that suit and decision, evidenced by the United States patent sued upon.

Fourth—That the United States did not part with its title to the land sued for herein until the issuance of its patent to plaintiff's ancestors in 1878; that there had been no prior severance of the said land or property from the public domain.

That the Court erred in holding that the title of the United States to this land or property was divested in favor of any private person prior to the issuance of its patent; or that the same had been severed from the public domain of the United States at any time prior to the issuance of the said patent.

Fifth—That the Court erred in holding that the defendant or any of the authors of its title had held or enjoyed

such possession of said land or property as is or would be sufficient to support or acquire a title to the same under the Civil Code of Louisiana, by presription or adverse possession.

That the only claim by right under which said property was ever at any time held, by any of the persons upon whose supposed title or possession the defendant relies, was to such right, title and interest as may have been had in said property by the vendor or author from whom the several parties in question purchased; that a party holding under such a title does not possess as owner, and that hence his possession is not sufficient to operate a title by prescription, however long may be its duration, and that the Court erred in not so holding.

Sixth—That under the whole of the evidence and testimony offered and introduced on the trial of the cause, defendant could not maintain its claim to a title by the prescription of ten years, established by the Civil Code of Louisiana.

Seventh—That the Court erred in holding that there had been at any time prior to 1878 any survey by the proper officers of the United States of the claim confirmed to Francois Gonsoulin, Dauterive Dubuclet, or Benoist de St. Clair, which had the effect of separating the land or property covered by said claim or confirmation, from the public domain, and making it private property.

Eighth—That the Court erred that there ever was any confirmation by the United States of any claim or title in favor of Samuel Watson, or of Walter Brashear to the land or property which is sued for herein, or of any part thereof; and the Court also erred in holding that the fee of, or title to the said property, at any time had ever passed

from the United States to the said Watson or the said Walter Brashear.

Ninth—That the Court erred in holding that there had ever been at any time any survey or other location or confirmation by the United States of the said land or property, or any portion thereof, in favor of either the said Watson or the said Brashear, or that the claim of the said Watson or the said Brashear relied upon by the defendant herein, was ever located or identified by limits, boundaries or by any lawful and sufficient authority of the United States.

Ninth—That the Court erred in holding that there was any divestiture of the title of the United States to the land or property sued for herein, at any date prior to the issuance by the United States of its patent in favor of Francois Gonsoulin, Benoist de St. Clair and Dauterive Dubuclet, in the year 1878, in favor of any person whatsoever.

Tenth—That the Court erred in any event in maintaining a title in defendant to any quantity of the property or land sued for herein in excess of three hundred and seventy-one arpents, this being the utmost quantity of land which in any event would be comprehended in any confirmation made by the United States of the title or claim of Samuel Watson or Walter Brashear, or of which there was any adverse possession sufficient to support the pleas of prescription made.

Eleventh—That the Court in any event should have instructed the jury to find herein a verdict for plaintiffs on the ground, if on no other, that the title of plaintiffs being a patent of the United States, should have prevailed over any and all other titles purporting to be derived from the United States; and the Court erred in not so instructing the jury.

Twelfth—That the Court erred in holding that at the time of the issuance of the patent herein to Francois Gonsoulin, Dauterive Dubuclet and Benoist de St. Clair, on the 13th day of ———, 1878, the United States was without power to issue said patent; that the Court should have held that the legal title to said property or land was and remained in the United States up to and until issuance of its said patent, and by the latter it conveyed the legal title to said land or property to the parties named therein and their lawful heirs.

Thirteenth—That the Court erred in holding that there was any adverse possession of the said land or property in any of the so-called authors of defendant's title, prior to the issuance of the said patent of the United States; that the Court should have held that any possession of the said land or property prior to the issuance of said patent cannot be the basis of any rights in favor of this defendant, but constituted a trespass; that the Court also erred in holding that there was possession for a sufficient length of time, either by defendant or any or all of the authorities of its pretended title, sufficient to acquire said land by prescription, under the Civil Code of Louisiana, or to support any action by plaintiffs for the recovery of said land or property.

Fourteenth—That the Court erred in holding that there had been or was held by the defendant, or any of the authors of its title, any possession sufficient in character and extent, or any part of the land sued for herein.

WHEREFORE, plaintiffs in error pray that the judgment herein of the Circuit Court of Appeals of the United States, for the Fifth Circuit, be reversed, and such direction be given that full force and efficacy may inure to plaintiffs by reason of the claim, demand and cause of ac-

tion set up in their petition filed in this cause; that the judgment of the said Circuit Court of Appeals, and of the Circuit Court of the United States, for the Eastern District of Louisiana, be reversed, and that the said Court be directed to grant a new trial of this cause.

STATEMENT OF PLEADINGS.

The plaintiffs in error, as the heirs of Francois Gonsoulin, and his wife, brought this ejectment suit in the Twenty-fourth Judicial District Court of Louisiana, for the Parish of St. Mary, by which they claim to be the owners, and to be placed in possession, of the following described property, to-wit:

> A TRACT OF LAND, called Belle Isle, consisting of Section Nineteen (19), Township Seventeen (17), South Range Eleven (11) East, one thousand nine hundred and eighteen and 75/100 acres (1918.75).
>
> Section Twenty-eight (28), Township Seventeen (17), South Range Ten (10) East, nine hundred and seven and 63/100 acres (907.63).
>
> Section One (1), Township Eighteen (18), South Range Ten (10) East, one hundred and thirty-seven and 76/100 acres (137.76).
>
> Section Two (2), Township Eighteen (18), South Range Ten (10) East, sixteen and 44/100 acres, (16.44).
>
> All lying in the Parish of St. Mary, fronting on Wax Bayou, and lying on the Atchafalaya Bay, in the Southwestern Land District of Louisiana.

Said tract was alleged to contain an aggregate of 2980.58 acres.

The suit, on the representation of the defendant, that it was organized under the laws, and was a citizen, of New

Jersey, was removed from the District Court of St. Mary Parish to the United States Circuit Court for the Eastern District of Louisiana. R. 6-7.

In this latter court, defendant excepted, that the alleged heirship of the plaintiffs was set forth in such a vague and unsatisfactory manner as to be unintelligible and untraversible, and, also, that plaintiffs' title was not derained with sufficient plainness and detail, as to permit one defendant to traverse the same. R. 9.

Plaintiffs, by supplemental petition, set out, with more particularity, the heirship of the plaintiffs of the deceased Francois Gonsoulin, and his wife, and, also, a more particular chain of title, by which they deemed themselves to be the owners of the property. R. 10-19.

Thereupon, defendant joined issue on the merits of the case, by the following peremptory exceptions, to-wit:

1. That defendant was in possession of the property, known as Belle Isle, in good faith, under a title translative of property, for more than ten years prior to the institution of the suit, and pleaded the ten years' prescription in bar of plaintiffs' suit.

2. The prescription of thirty years was also pleaded, based upon the alleged continuous, and uninterrupted possession of defendant, and the authors of its title, for more than one hundred years.

3. That the claim of plaintiffs was barred by a certain judgment, rendered by the Supreme Court of Louisiana, and, also, the District Court for the Parish of St. Mary, declaring the title of Gonsoulin to be invalid and of no effect, as against that of Walter Brashear, under whom defendant held. R. 20-21.

On May 16, 1901, defendant amended its pleas of prescription and *res judicata* theretofore filed, by disclaiming

title and possession, as to all that part of the property claimed in plaintiffs' petition, lying east of Doctor's Bayou, being that part of Section 19, Township 17, South Range 11 East, lying east of said bayou. R. 24.

On these pleadings, on November 12, 1901, the case went to trial. R. 24-25.

On November 13, 1901, the jury, under the instructions of the Court, found a verdict against the plaintiffs, on the pleas of prescription, and against the defendant, on its plea of *res judicata,* as in the case of non-suit. R. 107-108.

After an unsuccessful application by plaintiffs for a new trial, the Court, by reason of the verdict of the jury, decreed that there be judgment in favor of the defendant and against plaintiffs, sustaining the plea of prescription, filed by the defendant against the plaintiffs in bar of their demand; the plea of *res judicata,* filed by the defendant, was dismissed, as in case of non-suit; in view of the disclaimer filed by defendant, and to make it clear what part of the land claimed by plaintiffs from defendant, the plea of prescription applied to, it was adjudged that the said plea covered all of Section Twenty-eight, in Township Seventeen South, Range Ten East, and all that portion of Section Nineteen, in Township Seventeen, South Range Eleven East, which lay west of Doctor's Bayou, the said bayou being defined as the bayou appearing upon the official maps of said township, running almost due north and south from Wax Bayou to Lake Belle Isle; that the said pleas and judgment, thereon did not apply to all that part of Section Nineteen, Township Seventeen, South Range Eleven East, which lay east of Doctor's Bayou, the said east portion of the said section being land, title to, and possession of, which was disclaimed by the defendant. R. 116.

From this judgment, a writ of error was prosecuted, to the United States Circuit Court of Appeals, Fifth Circuit, and, from an adverse judgment of said Court, plaintiffs in error prosecute the present writ of error.

The judgment of the Circuit Court of Appeals affirmed the action of the Circuit Court, in sustaining the pleas of prescription, based upon adverse possession of the defendant, and the authors of its title, for more than ten and thirty years. R. 153-156.

ARGUMENT ON ASSIGNMENT OF ERRORS, AND STATEMENT OF FACTS PERTINENT TO EACH.

The first error claimed to have been made by the Court of Appeals, the full assignment of errors being heretofore set out, is the following:

> That the Court erred in holding that plaintiffs in error acquired any title under the grant herein, or through the confirmation of the same by the Act of Congress (April 29, 1816), or the approval of the survey of 1842, described in the record; and the Court should have held the contrary.

In order to fully comprehend the significance of this assignment, it is necessary to state the process by which plaintiffs in error claim to be the owners of the property in dispute.

So far as concerns the United States, the matter seems to have originated in the claim of Dauterive DuBuclet, Benoist De St. Clair, and Francois Gonsoulin, made to the Commissioners appointed for the purpose of ascertaining the rights of persons to land in the Western Land District of Louisiana. The claim was made for about *3300* arpents, and was for the island of woods on "Chafalayn Bay," about four leagues west of its mouth, and about thirty-two

leagues from Attakapas, the island being surrounded by a trembling prairie or marsh, fit only for the raising of hogs. Subjoined to the petition was a certificate of the Commandant Cher DeClouet, stating that what was exposed by the petitioners was true, and the island was only fit for the purpose for which it was solicited. There was also subjoined a certificate by Governor Miro, dated New Orleans, May 2, 1783, directing the Surveyor General to put the parties in possession of the island solicited.

On the examination before the Commissioners, there was no proof of occupancy, or other evidence of title, except that stated above.

The Commissioners reported to the Commissioner of the General Land Office that the claim ought to be confirmed. R. 66-67.

The report of the Commissioners upon this claim is to be found in the American State Papers, Vol. 18, containing Vol. 3 on the subject of Public Lands, Gates & Seaton's Edition, page 126, the claim bearing the number 33. On page 119 of the same book, is to be found the claim of DuBuclet, De St. Clair and Gonsoulin, for "about 3300 arpents," based upon an order of survey, its class being designated by the letter "B." Record, pp. 66-67.

This claim was confirmed by the Act of Congress of April 29, 1816, 3rd Stat. at Large, p. 328.

It should be here noted, that neither the recommendation of the Commissioners, nor the confirmation by the Act of Congress, fixed the extent of the tract so recommended and so confirmed; neither was the land claimed by plaintiffs in error located or defined.

Section 1, of the Act of Congress of April 29, 1816, declares that all claims marked "B," in the report of the Commissioners, and recommended for confirmation, which

included that of DuBuclet, De St. Clair and Gonsoulin, were confirmed. It is admitted that, if the language of this section, used in reference to the claims mentioned, "be and the same are hereby confirmed," stood alone, they would have operated at once; but, by Section 3 of the said act, the effect of this language was qualified and restricted by the declaration, that every person whose claim to a tract of land was confirmed by the act, who had not already obtained a patent certificate for the same, should, *whenever his claim shall have been located, and surveyed according to law, be entitled to receive from the Register of the Land Office a certificate,* stating that the claimant was *entitled to a patent for such tract of land,* by virtue of the act; further, that *the survey should entitle* the party to a patent for the tract of land.

From the provisions of Section 3, it would seem to be obvious, that the confirmation afforded by the Act of 1816, *itself* conveyed no title; that steps, subsequent to the adoption of the act, were necessary, before the title of the claimant was complete, so far as the confirmatory act made it so; that after the confirmation, the claimants were obliged to do certain acts in order to vest a title in themselves, and to divest that of the Government, which evidently had rights to the land, which the claimants sought to have relinquished by the confirmation.

The acts requisite for the claimant to perform, before the confirmation could have any effect, were the following:

1. He should have his claim *located* and *surveyed*, according to law;
2. *After* this survey, to obtain from the Register of the Land Office, a *certificate* stating that he was entitled to a patent for such tract of land;
3. Which cerificate *entitled him* to a patent, to be issued in like manner as provided by law, for patents to land purchased from the United States.

It would seem, therefore, to be obvious, that the confirmation itself, given by the Act of 1816, vested in the claimant no title to the fee in the land, and would become effective only by the accomplishment of the facts and conditions, subsequently to be done or performed, by him; and this followed by the issuance of a patent by the Land Office; all of which would show that it was not the intention of Congress that the fee should pass from the Government, or become vested in the claimant, until the patent was finally issued; and, until that moment, the property remained in the full possession and control of the Government.

The acts of the Commissioners in the matter in question were done under the authority of Section 8 of the Act of March 3, 1807, which provided that the Commissioners should report their opinion on all claims which they should not have finally confirmed by the fourth section of the act; that these claims should be arranged into three general classes, one of which, in the opinion of the Commissioners, ought to be confirmed.

3rd Stat. at Large, p. 440.

It may be mentioned, in passing, though not strictly pertinent here, that even as to such claims which, under the fourth section of the Act of March 3, 1807, were confirmed outright, such confirmation was not intended as a final or legal title, as against the United States, until their bounds had been ascertained, and the particular tract defined by a survey.

West v. Cochran, 17 H. 415-416.
Willot v. Sanford, 19 H. 79-82.
Cousin v. Labatut, 19 H. 202-210.
Maguire v. Tyler, L. Blck. 195-201-2.
Kissell v. St. Louis Public Schools, 18 H. 21.

In *Snyder v. Sickles*, 98 U. S. 203-213, where the survey was disapproved, and it became a nullity, the patent certificate could not issue, so that the rights of the claimant, under these conditions, were not advanced beyond what he acquired by the concession; the confirmation of the Land Commissioners was to be followed by their certificate of confirmation, declaring the party entitled to a survey, and a subsequent certificate from the local Land Office, upon which a patent could be applied for and obtained; which would mean that, until the patent did issue, the power of the Government over the land, to which there had been a confirmation, was complete, and until the patent, which is the final step of the Government's divestiture, was issued, nothing was acquired by the plaintiff.

Michigan, etc., Co. v. Rust, 68 F. R. 166; 168 U. S. 589-93.

Cosmos, etc., Co. v. Gray Eagle, etc., Co., 112 F. R. 4-12.

It is deemed not improper to again mention here, that even where, under the Act of 1807, the decision of the Commissioners was final in favor of a claimant, *a patent was still necessary to convey title.*

Burgess v. Gay, 16 H. 63.

Neither the laws of a State, nor the decisions of any of its courts, can authoritatively determine when the United States loses its title to public lands; for, whenever the question arises in any court, State or Federal, whether the title to land, which has once belonged to the United States, is lost, the question must be resolved by the laws of the United States, and not by the laws or decisions of State courts.

Wilcox v. Jackson, 13 Pet. 516.

It is shown that the claim of DuBuclet, De St. Clair and Gonsoulin, was surveyed by A. F. Rightor and Andrew McCollam, Deputy United States Surveyors, in the fall and winter of 1837 and 1838. (R. 105.) But this was not, and could not, have effect, as a governmental-approved of survey. *Perkins vs. Vincent*, 47 La. An. 579-580.

The approval of Williams, Surveyor-General of Louisiana, on August 1, 1838, of the *field notes* of the survey, declared by the Deputy Surveyors to have been made in the fall and winter of 1837 and 1838, would be at least equivocal, because, without further explanation, it might be that the survey was made, at least in part, at a date subsequent to the approval of the field notes.

The *map* of the survey was completed subsequently, and this the Surveyor approved on December 8, 1842; but, on December 23, 1842, the same month, he made a note on the map that, since it had received his approval, it appeared, by the testimony of the chain-bearers, that the surveys were but partially made in the field. This is not such an approval of the survey as would have any legal effect, without the consent of the claimants or their lawful successors, since, in the face of this so called approval of the Surveyor-General, there was in effect evidence of no approval at all, as the survey itself was incomplete and insufficient in law; it did not bind the claimants. *Afterwards*, in *1878*, Brewster, the Surveyor-General of the United States, did approve said survey without qualification, and this approval was accepted and acted upon by the claimants, or their heirs, who accepted from the Government the patent which was based thereon. The approval of 1842 appears to have been accepted by no one, still less the claimants. The fact that their successors, long subsequent to 1842, were willing to accept a patent based upon this survey, is, in no respect, to the prejudice of their rights.

It is manifest, however, that, by the very terms of Section 2 of the Act of April 29, 1816, the issuance and delivery of the Government's patent itself, was a prerequisite to the vesting of a title in the claimants, and until this patent was delivered to them, the fee was retained in the Government. Under Section 2 of the act, the claimants, after confirmation, were bound to have the property located and surveyed, according to law, and this gave them only a right to receive a *certificate*, declaring that they were entitled to a patent. Even after having received such certificate, it was their further duty to *obtain a patent* before the Government's title was divested.

Congress has full power to declare the dignity and effect of titles from the United States, and this, while legislation as to public lands declares the patent to be conclusive evidence of title; until it issue, the fee is in the Government.

Bagnall v. Broderick, 13 Peters 43.
Wilcox v. Jackson, 13 Peters 498.

Even where a grant has been held as one in *praesenti*, if the granting act provides specifically for the issuance of a patent, the rule is that the legal title remains in the Government until it was issued.

Bagnall v. Broderick, 13 Pet. 436.
Michigan, etc., Co. v. Rust, 168 U. S. 589-93.

And, until this is done, the land is within the jurisdiction of the United States.

Delmonte, etc., Co. v. Last Chance, etc., Co., 171 U. S. 55-7.

Until a patent issue, the legal title remains in the United States.

In cases where the statute imposed upon the confirmee the obligation to apply for and obtain a patent, the issuance

and delivery of such patent is indispensable to the legal title, which may be made to depend upon the patent itself.

Hall v. Jarvis, 65 Ill. 302.

Boatner v. Gentress, 8 Martin, N. S. (La.) 644-49-53.

In the last case cited, it was declared, that the Government might legislate in such a manner as to make the issuance of a patent necessary, before a divestiture of the United States of all property in public lands, and transfer of it to an individual, the Court expresses the belief that ordinary legislation respecting the public domain contemplates the retention of entire power over the object given until that is done.

Even where a grant of land is in *praesenti*, as in the case of the Swamp Land Acts of 1850, and there is provision that a patent shall issue for the lands, there is no title in the grantee until such patent has been delivered.

Roger, etc., Works v. American, etc., Co., 164 U. S. 559-70.

Michigan, etc., Co. v. Rust, 168 U. S. 589-92.

Until, in such case, a patent issues, the legal title remains in the Government.

Brown v. Hitchcock, 173 U. S. 473-6.

The lands are under the full and free control of the Government until the issuance of the patent contemplated and provided for by the statute.

Olive Land, etc., Co. v. Olmstead, 103 Fed. Rep, 568-74.

In *Tegarden v. Le Marchel*, 129 Fed. Rep. 487-8-9, it was held that prescription, or the statute of limitations, does not begin to run against an action of ejectment in the Federal courts, prior to the time when a patent for the land issues.

Gibson v. Chouteau, 13 Wall. 92.

In *Tegarden v. Le Marchel*, 129 F. R. 487-8-9, prescription, or the statute of limitations, does not begin to run against an action of ejectment in the Federal courts, prior to the time when a patent for the land issues.

See also *Redfield v. Parks*, 132 U. S. 239.

In actions of ejectment in the Federal courts, the strict legal title, which is the Government's patent, prevails over all others.

Foster v. Moreau, 98 U. S. 425-27.
Bagnall v. Broderick, 13 Pet. 436.
Highland Boy, etc., Co. v. Strickley, 116 F. R. 855.

Whatever equitable rights may grow up, prior to the delivery of the patent, are enforcible in an equity court alone, but not in an action at law; and while, in an appropriate action, such rights, if any exist, would be recognized, this suit is one in ejectment, in which the strict legal title prevails, and the Government's patent sued on by the plaintiffs, is the best title out of the Government, and the best title known to a court of law.

Bagnall v. Broderick, 13 Pet. 450.
Cooper v. Scheimer, 23 H. 485.

The defense set up here, and which was sustained by the court below, is that of prescription, or a title based on adverse possession for the time required by the Louisiana statute. Such a title is legal, and not equitable, but it must yield to the superior title given by the Government itself, evidenced by its patent.

Gibson v. Choteau, 13 Wall. 92.

No title by prescription can be acquired against the Government, or its grantees, prior to the issuance of its patent.

13 Wall. 100.

Neither the survey of 1837 and 1838, the field notes of which were approved in 1838, nor the map, which was approved in 1842, had the effect of conveying a title to the plaintiffs' ancestors; the survey was not final.

It should be remembered, that the application, or claim, of DuBuclet, De St. Clair and Gonsoulin, was to be confirmed in a tract of about 3300 acres, without definition or location of this quantity of land. The field notes of Rightor and McCollam, which, with the plat of survey, in 1878, were approved by Brewster, Surveyor-General, embraced 2826.28 acres, being less than the quantity claimed. This survey did not become final or binding until filed in the General Land Office (R. 69), when it was made the basis of the patent, which was afterwards issued to plaintiffs' ancestors. The survey itself was under the complete control of the Government, and could have been cancelled if the Government had seen fit to do so, prior to its being made the basis of the patent. The approval of the survey, and the plat, by the Surveyor-General, was not sufficient to make it final and binding; this could only be accomplished by the approval of the Commissioner of the General Land Office, or the Secretary of the Interior. Until this was done, the matter of the survey was still pending, and a new one might have been ordered.

City of New Orleans v. Paine, 51 F. R. 833-38; 147 U. S. 266-7.

In *Van Reynegan v. Bolton*, 95 U. S. 33, it was held that the survey by the Surveyor-General of the United States, of a confirmed claim, is not operative until finally approved by the Department in Washington.

This ruling was approved in *Shanklin v. McNamara*, 87 Cal. 381.

As to the survey in question here, there appears to be, on the plat, the approval of the Surveyor-General, under date of December 8, 1842; but that on December 23, 1842, the same officer declares by his note, just following the approval: "Since the approval of this map, it appears, by the testimony of the chain-bearers, that the surveys, under the contract of October 19, 1837, were but partially made in the field." See report of Surveyor-General, forwarded from New Orleans by V. D. Newcomb, Surveyor-General of Louisiana.

It is evident, from this note, that the survey of Rightor and McCollam had been forwarded by the Surveyor-General from New Orleans, undoubtedly to Washington, there for examination and revision. This is the last heard of the survey, until we are met by its approval, and the declaration that it was filed in the General Land Office, to be found in the patent of 1878. (R., p. 69.) It would seem, to be, therefore, so plain as to require no argument at all that the survey of Rightor and McCollam never was finally approved until 1878, when the patent issued; the so called approval, relied upon by defendant, shows this. As to the pretended approval of Williams, Surveyor-General, made in 1838, it was of the field notes alone, and the integrity of these are sufficiently impeached by the subsequent declaration of Newcomb, Surveyor-General, made in 1842, that they were shown, by the testimony of the chain-bearers, not to have been based in whole upon an actual survey; and this testimony appears to have been forwarded to the Land Office at Washington, along with the plat, for examination. What the result of this presumed examination was, we are not informed by the record, up to 1878, when the patent issued, when the survey itself seems to have been approved.

It may be observed, that under Sections 2395, 2396, 2397 of the Revised Statutes, all Government surveys must be made by actual operations upon the land surveyed, since they direct the marking of corners, of townships, and the distinct marking of each mile between such corners, these marks being different from those designating the corners, while the number of each township and section are to be marked on a tree near each corner, and the like, all making requirements impossible of fulfillment, unless by actual operations on the ground, or in the field itself; and the declaration of Newcomb, Surveyor-General, in 1842, was that there was testimony that, as to part of the survey, there were no operations in the field. In this condition, the matter was submitted to the Land Department at Washington.

If there was no severance of the land from the public domain, by the survey of 1837 and 1838, which received only a qualified approval of the Surveyor-General, in 1842, the land remained part of the public domain, and was the property of the Government. The necessary result of this would be, that any possession of the land held by any one, prior to the issuance of a patent was nothing more than a trespass, as there can be no prescription, or adverse possession, as against the Government, nor by it can there be any acquisition of title against the same.

95 U. S. 335-6.

Le Roy v. Jamison, 15 Fed. Cases, pp. 373-79.

Until the survey received the final approval of the Government, under any conditions, it retained the title.

It would seem, therefore, from the above, that the land in question was not severed from the public domain, either by the confirmation by the Act of Congress of April 29,

1816, nor by the survey of Rightor and McCollam, made in the fall and winter of 1837 and 1838.

The second assignment of error is that the Court erred in holding that the patent issued to DuBuclet, De St. Clair and Gonsoulin, on August 21, 1878, was not the first severance of the property from the public domain; but it was merely evidence of the title of the plaintiffs in error here.

If it be true, as argued above, that, under the terms of the confirmatory Act of Congress of 1816, there could be no severance of the property from the public domain until the issuance of a patent, or, if, not, that the survey of Rightor and McCollam, made in the fall and winter of 1837 and 1838, did not become final, complete or binding until approved, by the issuance of the patent in 1878, it would necessarily result, that the fee to the property remained in the Government until the issuance of a patent, and this really was the initial point from which prescription would begin to run, or when it would be possible for the defendant, and its authors, to acquire any title by adverse possession. There was, in consequence, no severance until the issue of the patent in 1878.

The third assignment is, that the Court of Appeals, in sustaining the pleas of ten and thirty years' prescription, founded upon the statute of Louisiana, and based upon adverse possession, erred; that the character of such possession was insufficient to sustain the pleas of prescription; that it did not extend to the area of the land claimed by the plaintiffs; that the possession was not of the kind, and extent, essential to sustain such pleas of prescription.

It is clear that, from the final approval of the survey, even conceding this to have been made in 1842, which is denied, as hereinbefore set out, defendant had only an

equitable title to the land; that is, it had the basis upon which to apply for and obtain a legal title, evidenced by a patent, which plaintiffs now have; and it has been held that prescription, or the statute of limitations, does not run against an equitable title, and this could not avail a defendant against a legal title.

Baird v. Wolfe, 7 Fed. Cases, pp. 429-431.
See also 4 McLean, 549.

Preliminary to any discussion of the grounds of this assignment, although prescription, under no circumstances, could begin to run, even under the theory of defendant, until 1842, when the plat of the Government's survey was *soi disant approved*, because, until up to that time unquestionably, the Government's title had never been divested, it would be instructive to ascertain the nature of the title of Walter Brashear, under whom, the defendant claims, so far as it it based upon written title of any character whatsoever, apart from any muniment derived from adverse possession alone.

The pretended title of Brashear, here adverted to, not because it is really a part of this case, but simply for the purpose of convenience and information, seems to have been the following:

On July 25, 1809, the Judge of the Parish Court of Attakapas, under a writ of *fieri facias* issued to him, in the suit of *John N. Kershaw v. Samuel Watson*, set over to the former all the right, title and interest which on February 27, 1808, the said Watson had in the "tract or parcel of land known as Belle Isle, situate near the mouth of the Chafaliah, in the parish aforesaid" (Attakapas); the tract of land contained "the whole island of *1500 acres, more or less.*" (This is the only mention in the deed of an island.) R. 32-33.

It should be noted, that the area of the tract, inferentially declared to be an island, was stated to be *1500 acres*, more or less, and the conveyance was only of the right, title and interest of the defendant, Watson.

Kershaw, having thus acquired the rights and claims of Watson, the former on July 24, 1809, which was the *day before* the conveyance of the Justice of the Peace to Kershaw, if the dates of the respective deeds are to be attended to, conveyed to Henry Johnson "all the right, title, interest, claim and demand of the said Kershaw thereto," to the land, which was described "as being a certain tract called Belle Isle, situate near the mouth of the River Chafiliah, in the parish aforesaid (St. Mary), containing *1500 acres*, more or less."

It is clear, by this deed, that Kershaw undertook to transfer to Johnson nothing more than his right, title and interest, or quit claim, to the property. R. 34.

Johnson appears to have held, under this deed, for less than a month, since August 5, 1809, he "renounced, relinquished and forever *quit-claimed*," unto Walter Brashear, all his right, title, interest and claim in and to the tract or parcel of land called Belle Isle, situate near the mouth of the "Chafalaya," supposed to contain *1500 acres*. R., p. 35.

It will be observed that, in all three of these quit-claims, or releases, the extent of land to which the right, title and interest of the vendor was conveyed, was declared to be *1500 acres*, more or less. It will be pertinent to inquire how it was that the title of Brashear became finally expanded from *1500 acres*, more or less, to *2800 acres*, or nearly double the amount, as was first claimed by the defendant, especially when the Commissioners confirmed Brashear's title to 316 9/100 acres, and no more, as will be seen.

It further appears that on July 22, 1811, Walter Brashear made to the Board of Commissioners, appointed for the purpose of ascertaining and adjusting claims for lands in the Western District of Louisiana, his claim for *571 arpents*, under an order of survey and settlement in favor of Samuel Watson. Brashear appears to have produced in support of his claim the affidavits of two witnesses, one Oliver Ormsby, setting out that, under a contract made with William Martin, on November 27, 1803, he made an establishment upon, and improved, the land (571 arpents) for the use and benefit of the claimant (Brashear); that while he remained on the land, which was for only ten or twelve days, Martin built a cabin thereon, and cleared about three acres of land, on which vegetables were planted; that affiant sold his contract to Creed West, who continued to reside on the land, and cultivated the same for two or three succeeding years, as the tenant of Brashear; that the land had been occupied and cultivated ever since December, 1803. The affidavit of the other witness, William Briggs, set out that he was on the land when it was occupied by Martin, from whom, he understood, that he had resided there as a tenant of the claimant; and at that period Martin had cleared about ten or fifteen acres, and had a good cabin built. R. 64-65.

It is shown that the Board of Commissioners adjourned on May 11, 1815, some four years afterwards, without any action at all upon the claim thus made by Brashear. (R. 65.) Notwithstanding this, however, on July 22, 1836, these same Commissioners, by Certificate B No. 1169, certified that Brashear was confirmed "in his claim to a tract of land containing *371 superficial arpents*, equal to *316.96 acres*, founded upon an order of survey in favor of Samuel Watson, dated July 30, 1802," * * * "situate in the County of Attakapas, on the island known by the name of

Belle Isle, near the Bay of Chaffoliere." R. 62-63.

It would thus appear that, although Brashear had acquired a quit-claim to *1500 acres* of land, that he deemed himself entitled only to *571 arpents*, to which he claimed a confirmation; but his claim for this number of arpents was further diminished by the Commissioners to 371 superficial arpents, or 316.96 acres, which would show that up to July 22, 1816, Brashear believed himself entitled to only *571* arpents, for which he prayed for a confirmation; but, in the opinion of the Commissioners, in their certificate of July 22, 1836, the extent of his claim was diminished still further, as he was allowed only *316.96 acres.*

It is manifest, therefore, that, according to Brashear's idea of the area covered by his own claim, it was only 316.96 acres, the extent of land which was awarded to him by the Commissioners on his application. The claim of Brashear was never surveyed, no patent was ever issued to him for it. It is clear that Brashear, all during the life time, never claimed to own more than 316.96 acres of land, situate on *some part* of the island; that this was not located, nor defined; that it was not a specific tract, but a certain quantity of land, for which neither he nor his heirs never at any time received a patent, and which was never surveyed. He could, under no circumstances, have claimed more than 316.96 acres, and, as to this, his title was fatally defective, because he had never received any patent for it, nor anything that was equivalent to a patent, nor was it ever located or defined by a Government survey.

West v. Cochran, 17 H. 402-14.
Snyder v. Sickles, 98 U. S. 203-13.
Willmot v. Sanford, 19 H. 79-82.
Cousin v. Labatut, 19 H. 202-210.
Magwire v. Tyler, I Black 195-201-2.
Kissell v. St. Louis Public Schools, 18 H. 21.

The ownership of Brashear and of the defendant, under whom it claims, does not result from any written chain of conveyances, or titles, or any divestiture from the Government, resulting from its voluntary act; but, if there be any title in the defendant at all, which is denied, it is such title as might result by adverse possession, or prescription, in favor of defendant, or the authors of its title.

The contention of the plaintiff in error is, that there has been no such possession by the defendant, or its authors, either in kind or extent, which would give it a title; that the only real title to the land in question is that which results from the patent issued to plaintiffs' ancestors in 1878.

Having thus, for purposes of explanation alone, set out the position of Brashear as regarding any title he might have had from the Government, we proceed to discuss the character and extent of the possession disclosed of defendant and its authors.

It is claimed by the former that prescription begins to run against the plaintiffs in error from the date of the approval of the survey of Rightor and McCollam, which, as we have seen, at the very earliest, would begin with the approval of the Surveyor-General, of December 8, 1842, although, on December 23, 1842, this approval is practically withdrawn by his declaration that, since it appeared, by the testimony of the chain-bearers, that the surveys were but partially made in the field. As we have already argued, this certificate would seriously qualify, if not do away entirely with, the approval, especially as the portion of the survey not made in the field is not specified, and the note of the Surveyor-General, therefore, would impeach the entire survey; it does not indicate what portion was made in accordance with law, and what was not so made; and it has also been argued

that this left the matter of the survey, entirely at large, subject to be accepted or rejected by the Land Department, and that it was only *finally accepted* in 1878, after "the plat of survey made was placed on file in the General Land Office," and was approved by the Surveyor-General on April 22, 1878. R., p. 69.

It would also seem, from the recitals of the patent, which import absolute verity, that the *patent certificate* to which plaintiffs' ancestors were entitled, under the Act of Congress of April 29, 1816, had been deposited in the General Land Office, a proceeding which, under the confirmatory act, was absolutely necessary before the patent, which was the final divestiture of the Government, could be issued. R. 68-69.

Taking, then, for the sake of argument alone, December 23, 1842, as the beginning of the prescription which might have run against the plaintiffs in error, it is respectfully submitted, conceding the proof of all the facts as to which there is any evidence at all, there is no result in the showing of such possession, as would make out a title by prescription in favor of Brashear, or those holding under him. The prescription claimed, being without any title at all, must necessarily be that of thirty years, being based upon mere possession alone.

The prescription of ten years, by which a party becomes the owner of property by possession, must be in good faith, and under a title. R. C. C. (La.), 3474-3478.

The prescription of thirty years is based upon possession alone, without any title, and whether or not the party be in good or bad faith. Revised Civil Code (La.), Arts. 3475, 3499.

By the terms of Revised Civil Code (La.), Art. 3503, however favorable soever prescription may be, it must be re-

stricted within just limits; thus, in the prescription of thirty years, by which property is acquired without title, it extends only to that which has been actually possessed by the person pleading it.

Donnegan v. Martinot, 9 Martin, O. S. (La.) 43.
Prevost v. Johnson, do 174.
Gillard v. Glenn, I Rob. (La.) 159.

Adverse possession, without a title, does not extend beyond the land actually enclosed. *Prevost v. Johnson*, 9 Martin, N. S. (La.), 174; *Ellis v. Prevost*, 19 La. 251-257. Adverse possession is not established sufficiently to support prescription where neither the extent of the land enclosed, or improved, *nor the time when such enclosures or improvements were made*, is shown. *Basseron v. McRae*, 9 La. An. 281. The *particular spot, or spots*, where the possession was exercised must be shown. *Bernard v. Shaw*, I Martin, N. S. (La.), 480. The *full limit* and *extent* of the property so possessed must, also, be shown. *McDonough v. Childress*, 15 La. 566. Its *commencement* must be shown by a corporeal possession. *Wilson v. Martin*, 10 La. An. 327.

The only testimony to show any possession at all in Brashear, and it is upon possession as a fact alone, that the judgment of the court below maintaining his title, can be affirmed, rests upon the testimony of Wofford (R. 84), and Lawrence (R. 86). The testimony of neither one of these parties shows possession in Brashear sufficient to maintain prescription. Touching this, the first statement made by Wofford is found on R. 85. He says that Dr. Walter Brashear raised cane on the island up to about the year 1834 or 1835, and that the witness's brother was his overseer about 1834 or 1835; that he *acquired the informa-*

tion he gives *from Dr. Brashear and his brother.* This statement is no evidence at all, because it appears to be based entirely upon hearsay, and in no respect upon his own knowledge. The witness adds that, after this—but he *does not state when*—that the island was used as a cattle ranch by Dr. Brashear, and was so used by him at the time of his death in 1860. This statement is insufficient to show possession in Brashear, sufficient to sustain the prescription of thirty years, because its *date,* or *commencement,* is not fixed; so that, therefore, it is impossible, from this statement, to ascertain when the prescription began to run.

10 La. An. 327; 11 Rob. (La.) 56; 9 La. An. 281.

It is impossible to fix with certainty the commencement of Brashear's possession prior to 1860. The same may be said of the declarations of the witness, that he knew at one time the island had been rented to a Dr. Tarleton, who had possession for about one year only. It seems that Dr. Brashear died in 1860, and whatever was possessed by him then passed to his heirs. Supplying all the deficiencies of the witness's testimony, it would seem that it could only establish, as a fact, that Brashear was in possession of the land when he died in 1860, and from this year alone could prescription, with any certainty, be fixed as beginning. R. 84-85.

The testimony of Robert B. Lawrence (R. 86-90) is to the effect, that he had been all over the island many times from 1858 to 1892; that its natural boundaries were Wax Bayou on the north and west, Doctor's Bayou on the east, and Atchafalaya Bay on the south; and this was the property known as Belle Isle Island; that in 1855, when he first knew Belle Isle, it was in possession of Dr. Walter Brashear. The balance of the

witness's testimony, relating to the possession of Brashear, is clearly hearsay, or traditional, and in great part relates to occurrences which happened before he was born.

It is an indispensable requisite of testimony offered to show possession, in support of a plea of prescription, based upon adverse possession, that the possession pleaded should be of the identical land which is sued for.

It may be very seriously questioned to whether or not the testimony of Wofford applies to the particular land which the plaintiffs in error seek to recover, and which, the defendant insists, it has acquired by adverse possession. So far as concerns Lawrence, it would seem that as late as April 30, 1869, when he bought the place at a sale on execution by the Marshal, it is clear, what he thought, was the extent of the property, because in the deed of the Marshal to him, in the suit of *Warfield v. Heirs of Brashear* (R. 94), and which was, from that date, Lawrence's muniment of title, the property in question is described as follows:

> "3rd. A tract of land fronting on Wax Bayou and Atchafalaya Bay, in the Parish of St. Mary, containing *400 acres* of land, more or less, and known as 'Belle Isle Island.'"

From which it would seem that Lawrence understood, when he bought Belle Isle, that he was acquiring only *400 acres of land;* although, when Lawrence, on July 20, 1892, (R. 40) sold the tract of land known as Belle Isle to Withers, he conveyed "*400* acres in high land, more or less, *and 2400* acres of sea marsh or pasture lands, in all 2800 acres, more or less;" at the same time declaring that the property was the same which he acquired at the execution sale by the United States Marshal, on April 30, 1869, in the suit

of *Warfield v. Heirs of Brashear*, it being also the same land, the deed declared, that Walter Brashear had acquired from Henry Johnson on August 5, 1809, which was attached to the act.

Under the quit claims of Kershaw and Johnson, the tract was stated to be *1500 acres;* the application of Brashear for confirmation stated it to be *571 arpents;* the finding of the Commissioners confirmed his title only to *316.96 acres*, all of which, was much less than the area of the whole island, so called, which, by deeds, under which the defendant claims, was declared to be *3800* acres in extent. Besides, the fact that Brashear must be considered as holding, under his title, likewise Lawrence, it is quite evident that the testimony of both Wofford and Lawrence is not clear and exact, as to the extent of the possession of Brashear, how much land he had enclosed or physically taken possession of, since, as to its area beyond 316 96/100 acres, being entitrely without title, he acquired dominion and ownership of this overplus, only inch by inch, of so much of the land as he actually reduced to possession. They are also uncertain as to the *commencement* of Brashear's possession, and this is an indispensable requirement, since the duration of his possession would date from this, and it must be made certain in order to calculate the term of his possession. It appears, from the testimony of Wofford, that Brashear was in possession of some portion of, what is called the island, at his death in 1860, and this is as far as his testimony goes. The testimony of Lawrence proves simply a like possession, undefined in character or extent, and not fixed at all as to precise date from 1855.

It is well recognized that where a party pleads prescription, and his possession is not under title, but his muniment is based upon possession alone, his tenure is that of a

usurper or an intruder, and he acquires title only inch by inch of the land actually occupied.

Dennegan v. Martinot, 9 Martin, O. S. (La.), 43.
Prevost v. Johnson, do 174.
Gillard v. Glenn, 1 Rob, (La.)159.
R. C. C. (La.) 3503.

It is fully shown that, so far as concerns the present pretensions of defendant, Brashear took possession of Belle Isle without any pretense of title whatsoever; that the only title he could have made was to 316.96 acres, undefined and unlocated, to which, on his own application, he was confirmed. This was not followed by any Government survey, by which this number of acres was identified, and it was a confirmation only to a *quantity*, but not to a *specified tract*, of land; it was without effect, at any rate until fixed, or until a patent issued; it was, therefore, incumbent on defendant to show the precise extent of the possession of its author, in any event. 18 La. 484; 6 La. An. 66; 7 La. 123; 1 Rob. (La.) 378; 13 La. 338; R. C. C. (La.) 3505.

Assuming, however, for the sake of argument, that the property was severed from the public domain, and that the plaintiffs, or their ancestors, were in a position to claim a patent from the time of the survey in 1842, possession of thirty years in Brashear, and his heirs, would be necessary for him to acquire a title; 1872 would, therefore, be the earliest date at which Brashear and his heirs could have become the owners of the property by adverse possession. Brashear died in 1860, and on April 30, 1869, the property was sold under an execution sale by the Marshal to Robert B. Lawrence (R. 36-39). Robert B. Lawrence was not one of the heirs of Walter Brashear, so that this acquisition was by one who was a stranger to the succession. At the death of Brashear, who was a grandfather

of Robert B. Lawrence, the latter was not an heir, but his mother, one of the children of Brashear, who necessarily excluded him, was an heir (R. 87); and there is no evidence of her having died at any time subsequent to Brashear's death.

At the date that Robert B. Lawrence claims to have acquired the property, he succeeded only to such rights, claims and presentations as Brashear and his heirs may have had to the property, and this was all that he could have acquired by his purchase. 3 Martin, O. S. (La.), 615; 8 Martin, N. S. (La.), 537; 10 La. 453; 40 La. An. 333.

Putting the case in the aspect most favorable to the defendant, the possession of Brashear and his heirs continued, at most, from 1842, when the survey of the claim of DuBuclet, De St. Clair and Gonsoulin received a *quasi* approval, until 1869, when their rights, whatever they were, were purchased by Lawrence, at the Marshal's sale, in the suit of *Warfield v. Heirs of Brashear*. This would give, at the most, as is stated, a possession of twenty-seven years.

Turning, however, to the Marshal's deed (R. 37), given to Lawrence, which was fully accepted by him, as his muniment of title, we find the following, both after and before mentioning other property, the following description of the only property he purchased, which could be considered as even intimating the property sued for here:

> "3rd. A tract of land fronting on Wax Bayou and Atchafalaya Bay, in the Parish of St. Mary, containing *four hundred acres* of land, more or less, known as Belle Isle Island."

This description, is plainly too vague and indefinite, to convey title to any land at all, as it would equally apply to

any other land fronting on Wax Bayou and Atchafalaya Bay, in the Parish of St. Mary. It was not a sale *per aversionem*, or by boundaries. 3 La. An. 326; 43 La. An. 42. In any event, Lawrence thus acquired only *four hundred acres of land, more or less*, which, approximately, is about one-seventh of the quantity of land claimed by the defendant here, by reason of adverse possession. It must not be forgotten that the defendant sets up no title at all, but relies on naked possession alone for his right; and the so called title of Lawrence, is here referred to, merely as showing what he undertook at the time to acquire.

If, however, it should be claimed that defendant has the right to add the period of the so called possession of Brashear, and his heirs, to that of Lawrence, in order to give a title by possession to the whole of the island, under Revised Civil Code (La.) 3493, 3494, by which the possessor is allowed to make the sum of his possession, necessary to prescribe, by adding to his own possession that of his authors, there are insuperable difficulties in the way of such a procedure. In the first place, in order that Lawrence might unite the possession of Brashear and his heirs to his own, the former must have possessed in good gaith and under color of title. *Innis v. Miller*, 10 Martin O. S. (La.), 289-292.

As has been seen, Brashear was not in good faith at all, and, in fact, this is not claimed, because defendant relies upon adverse possession of thirty years as a means of making out a title, and this necessarily assumes possession in bad faith. Revised Civil Code (La.) 3499. And it is not claimed that he had any written title. Revised Civil Code (La.) 3503. Besides all this, Lawrence had full knowledge of the nature of Brashear's possession and that of his heirs, and was fully and completely acquainted with all its

vices and defects, as is abundantly shown by his testimony. (R. 87-90.)

It is a further requisite of the power of the possessor to add the possession of his author to that of his own, in order to complete the required period, that the latter should have held in good faith, since a purchaser of property acquiring from one who has held in bad faith, can never add the time of his author's possession to his own for purposes of prescription. *Kohlman v. Glaudi,* 52 La. An. 700-703. The plea of thirty years' prescription necessarily admits and declares Brashear to have been in bad faith, besides which, the facts unquestionably show that he was without any title at all, and that he held with full knowledge of this fact.

It was a further indispensable prerequisite for Lawrence to tack on the possession of Brashear and his heirs to his own to complete the possession of thirty years, that the land as to which this right is sought to be exerted should be held by the previous holder by a deed, as such right of adding the possession of his author to that of his own, is conditioned on the fact, that the former should have acquired by title; this rule applies only where the land in question is included in the boundaries given by a deed of such possessor's author. It is seen there was no deed at all to Brashear, who relies upon naked possession without a deed, nor any from Brashear and his heirs to Lawrence, who acquired at an execution sale, and at this, only *400 acres* of land; so that, in no evnt, could the possession of Brashear and his heirs, of which Lawrence could avail himself, extend beyond these *400* acres, which were unlocated, undefined, and not identified, in any manner at all, assuming that the description in the Marshal's deed, is such description, as would convey property at all.

Railway Co. v. Lerosen, 52 La. An. 192-194-204.

It has been held, where the author of a party's title, at the time of the transfer to the former, had *possession* of the property, but *no title* to it, the party, unless *he himself* had possession thirty years, fails to establish title by prescription,

Innis v. Miller, 10 Martin, O. S. (La.), 292.

It cannot be claimed by defendant, who claims, by adverse possession alone, that Brashear, or his heirs, had a written title of the property, and it is clear that they did not possess the property for a sufficient time, to acquire a title by prescription, by that fact alone.

By Revised Civil Code (La.) 3505, the rule announced in R. C. C. (La.) 3486, as to the ten years' prescription, is extended to the prescription of thirty years.

Whatever kind of a title Lawrence may have acquired to the nondescript tract set out in the Marshal's deed, as fronting on Wax Bayou and Atchafalaya Bay, in the Parish of St. Mary, containing 400 acres, more or less, and known as Belle Isle Island, he was, under any circumstances, a possessor in bad faith, and it would require the possession of thirty years for him to acquire a title by prescription. This he never had, as his possession ended July 20, 1892, when he sold to Withers, by a description of property which became expanded from *400* acres to *2800* acres, the description being the following, to-wit:

> "A certain tract of land, called Belle Isle, situate, lying and being in the Parish of St. Mary, State of Louisiana, bounded on the west by Wax Bayou, upon which said island fronts, and on the South by Atchafalaya Bay, and on the east by Doctor's Bayou, containing 400 acres, high land, more or less, and 2400 acres sea marsh or pasture land, in all 2800 acres, more or less." (R. 40-42.)

It further appears, from the testimony of Withers (R. 91-93), that at the time of his purchase he had knowledge of the claim set up to Belle Isle, and that his information was that this title had been annulled by judgment of the Supreme Court of Louisiana about sixty years before he bought the property, and that the patent, or claim of plaintiffs in error, based on the same title, was null and was of no value or validity. It would seem from this that Withers had brought home to him knowledge of the adverse claim of plaintiffs, and, under the advice of others, undertook to assume that it was of no validity. This, of course, bound Withers, but nobody else, and his information was not correct. The title of plaintiffs' authors had not been annulled by the Supreme Court of Louisiana, in *Gonsoulin Heirs v. Brashear*, 5 Martin, N. S. (La.), 35, where the contest was, which had the best *equitable* title, *under the Spanish Government*, and the suit concerned only the title of plaintiffs resulting from the confirmation in 1816; that, as to the Government, the Court declared, the parties stood upon equal pretensions before the court, and they were, therefore, thrown back upon their titles under the former Government, under which the dominion of the soil was vested in the Government, and that no title became vested until the issuance of a grant; that the Government of the United States, when it took possession of the country, showed that it considered that the claims of both parties required not only confirmation, but, also *a patent to vest the title;* that the defendants had the best equitable title under the Spanish Government. The question of prescription was not examined into at all, as the court did not deem it necessary. 5 Martin, N. S. (La.), 35-36-37.

The plaintiffs here, it seems, have obtained from the

United States its legal title in the form of a patent, a muniment which they did not possess in 1826, when the case in 5 Martin, N. S. (La.), 35-37, was decided; and upon that they now sue, thus making a stronger showing than was had in 1826, at which time their claim had not been even surveyed.

Having thus brought to him the knowledge of plaintiffs' rights and claims to the land, Withers was undoubtedly a possessor in bad faith, and required the possession of thirty years to complete his title.

On February 7, 1898, Withers sold to Dorwin (R. 54), while Dorwin sold to defendant on March 31, 1898. (R. 98.)

The citation in this suit was served July 1, 1898, which, of course, interrupted prescription, which remains suspended during the pendency of the suit, which has lasted until the present date. Revised Civil Code (La.) 3518.

So that the suit was brought before the expiration of thirty years necessary to complete by prescription, the title to Lawrence himself.

It has been claimed that the case of *Joplin v. Chachere*, 107 La. 522, 192 U. S. 94, is decisive of this suit in favor of the defendant. In the case mentioned, the question was, whether a tax title, based upon the assumed ownership of a party whose claim was confirmed by the Act of Congress of April 29, 1816, was valid for the purpose of taxation by the State. The Court maintained the tax sale, as well as the adverse possession thereunder.

The facts of the present case are radically different from those in the Joplin case. There the confirmation, which was decided to convey a title, concerned an exact quantity of land, located and identified, by the possession of the confirmee. It concerned a definite quantity of land, the extent

of which was marked by known boundaries. The title of Poiret, the original holder, was obtained by occupation, and the right of his successor, Joplin, was dependent upon that. The Court declared that it was inconceivable that the boundaries of the tract were not ascertained by them; the certificate was for an expressed exact quantity of land; the identity of the land was fixed by evidence before the Board.

From all of which, it was concluded by the Court, that the land was sufficiently identified and located by the confirmation itself, and operated as a segregation of the property from the public domain.

Here, however, the conditions were entirely different; the land claimed was 3300 arpents (R. 66); there were no conditions of settlement, etc., subjoined to the certificate of the Commandant accompanying the petition of the claimants; there was no proof of occupancy, or other evidence of title, except the simple granting of the order of survey; the Commissioners expressed their opinion that the claim ought to be confirmed (R. 66-67), and in this condition it was confirmed by the Act of Congress of 1816. The recommendation for confirmation by the Commissioners, therefore, identified no particular tract of land, as was the fact in the Joplin case; nor was this done by the Act of 1816, confirming it. The first thing towards locating or defining the land confirmed was the survey by Rightor and McCollam, the map of which was partially approved by the Surveyor-General in 1842, and, from the language of which approval, it would appear that the claim was subject to further action by the Land Department, and this, it has been seen, was only had in 1878, when it appears for the first time, with the map of survey, on file in the General Land Office, approved by Brewster, Surveyor-General of the State of Louisiana, April 22, 1878. (R. 69-70.)

The difference between the facts of this confirmation and that found in the Joplin case is palpable, and serves to place the present controversy entirely beyond the authority of the decision mentioned.

The remaining assignment of error are sufficiently covered by the foregoing discussion, upon which they are submitted.

There can be no question raised on this writ of error, except whether or not the judgment of the Circuit Court of Appeals, in maintaining the defendant's plea of adverse possession, is correct, or not. It is submitted that the judgment, so far as it maintains such plea, is erroneous; the judgment of the Circuit Court dismissing the plea of *res judicata* based upon the decision in *Gonsoulin Heirs v. Brashear*, 5 arMtin, N. S. (La.) 35, was in case of non suit; so, therefore, this matter is out of the case altogether.

The judgment of the Circuit Court of Appeals simply affirmed that of the Circuit Court.

The judgment to which the writ of error is prosecuted should be reversed, and an order made directing the entry of a judgment for the plaintiffs in error.

Respectfully submitted,

BRANCH K. MILLER,

DAVID TODD,

Attorneys for Plaintiffs in Error.

SEPTEMBER, 1904.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 50.

FERNAND BONIN, VALCOUR BONIN, ET AL.,
PLAINTIFFS IN ERROR,

vs.

THE GULF COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF IN BEHALF OF PLAINTIFFS IN ERROR, ON QUESTION OF JURISDICTION.

This suit is one arising under the Constitution and laws of the United States. The decision of the circuit court of appeals is therefore reviewable here on the writ of error, since the jurisdiction of the circuit court, did not depend exclusively upon the diverse citizenship of the parties, but was equally maintainable in said court on account of the subject-matter.

The plaintiffs in error asserted a title to the land in controversy received from the United States, and it is in affirmance of, and to assert, this title that this suit is brought.

Under the petition of plaintiffs the court is called to decide, whether the statute of limitations, or prescription, begins to run against the patentee prior to the issuance of the patent. This requires an interpretation of the act of Congress of March 3, 1807, under which the patent of plaintiffs was issued. This would be, of itself, enough to maintain the jurisdiction here, as there would thus be presented the question of the interpretation of an act of Congress, or title acquired from the United States, depending upon such act of Congress. This would make the case at least, one arising under the laws of the United States. But, independent of that conspicuous feature of the case, it is unquestionably one arising under the Constitution and laws of the United States, or a treaty made by the United States.

The petition sets out, that by a grant from the Spanish government, to which the land belonged, it was acquired by Du Buclet, de St. Clair, and Gonsoulin, in 1783; that, by legal and proper transfers, the interest of Du Buclet, de St. Clair, and Gonsoulin had become vested in the heirs of Gonsoulin and his wife, plaintiffs' ancestors; that to these—that is, the heirs of Gonsoulin—a patent has been issued by the United States Government after due recognition of their rights by the Commissioner of the Land Office; that the rights of the plaintiffs are recognized in the Commissioner's reports in the United States Land Office, of the year 1875. Plaintiffs aver, that their claim to the said grant and concession covering said land dates back to the year 1783, or thereabouts, and that this concession was recognized and confirmed by the United States Government, after proper and legal surveys had defined the boundaries, and segregated said lands; that the latter was then in the possession of and illegally detained and held by the defendant; that plaintiffs were entitled to be declared the owners of the said lands, which were averred to be worth twenty-five thousand dollars.

This petition was originally filed in the twenty-fourth judicial district court for the parish of St. Mary, State o

Louisiana, from which it was removed by defendant into the circuit court of the United States for the eastern district of Louisiana.

By supplemental petition filed in the circuit court (R., p. 17) plaintiffs averred that they were the true and lawful owners, jointly and in indivision, of Belle Isle; that on August 21, 1878, there was issued a patent, or letters patent, of the United States to said land, by which, the same were given and granted unto Dauterive Du Buclet, Benoist de St. Clair, and Francois Gonsoulin, or to their legal representatives, or to their heirs and assigns; that the said patent, letters patent, or grant, constituted a title to the said property in favor of the grantees therein named, their representatives, heirs, and assigns, which was legal, valid, and binding as to all persons; also that the Gulf Company, a corporation created by and organized under the laws of the State of New Jersey and a citizen of that State, but having an agent in said parish of St. Mary, within the eastern district of Louisiana, with full power to receive citation and stand in judgment, was in possession of said property under some pretended title of ownership (R., p. 19).

By section 5 of the act of March 3, 1891 ("the court of appeals act"), appeals or writs of error, were to be taken, from or to the district courts and existing circuit courts direct to, or from, the Supreme Court in cases where the jurisdiction was in issue, in prize cases, in cases where there was a conviction of a capital or other infamous crime, in cases involving the construction or application of the Constitution of the United States, in any cases in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question, and, finally, in any case where the constitution or law of a State, was claimed to be in contravention of the Constitution of the United States.

By the terms of section 6 of that act, the circuit courts of appeals were given appellate jurisdiction to review, by writ

of error or appeal, final decisions of the circuit courts other than those provided for in section 5, unless otherwise provided by law, and the judgment or decrees of the circuit courts of appeals were made *final in all cases, in which the jurisdiction was dependent entirely upon the opposite parties to the suit or controversy, being aliens, and citizens of the United States, or citizens in different States.*

The question here, therefore, is, whether or not the jurisdiction or power of the circuit court depended *entirely* upon the diverse citizenship of the opposing parties, or whether or not, this jurisdiction could have been maintained on other grounds.

The jurisdiction of the circuit court did not depend *entirely* upon the citizenship of the parties to the suit. Plaintiffs set out their title, which is a grant from the Spanish government, made when Louisiana formed a part of the dominion of Spain. The United States had issued its patent for the land covered by the original Spanish grant, which was recognized and confirmed by the United States, after the boundaries of the same had been defined and segregated by legal and proper surveys; that the *corpus* was in the possession of and *illegally* detained and held by the defendant.

Plaintiffs setting up a patent of the United States as being in part their muniment of title, the validity, *vel non*, of such patent was clearly at issue, arising on the face of plaintiffs' petition. As every patent for lands is issued under the authority of Congress, the determination of the question, whether or not the patent is legal and valid, necessarily involves a construction of the act of Congress under which it was issued.

It has been decided, that the circuit court of the United States has jurisdiction, irrespective of the citizenship of the parties, of an action in ejectment where the controversy turns upon the validity of a patent of the United States.

Doolan vs. Carr, 125 U. S., 618–620.

Of such an action, the circuit court has jurisdiction, being one arising under the Constitution and laws of the United States.

125 U. S., 620.

Where plaintiff claims an equitable title to land originally belonging to the United States, it has been held that this question can only be determined by an examination and construction of the United States land laws, and the Federal courts have jurisdiction, where such examination and construction is demanded; that it had been repeatedly decided, that a suit may be properly said to arise under the Constitution or laws of the United States whenever its correct decision depends on the construction of either; that cases arising under the laws of the United States, are such as grow out of the legislation of Congress, whether these constitute the right, privilege, claim, protection, or defense of the party by whom they are asserted in whole or in part. Wherever the right or remedy sought or the defense made depends upon a law of Congress, or the construction of the Constitution, the act of 1875 (which was unaffected in this regard by its subsequent amendment) unquestionably opened the Federal courts to such suitors. This doctrine has been so frequently declared that it requires no further argument, (Cohens *vs.* Virginia, 6 Wheat., 264; Osborn *vs.* Bank, 9 Wheat., 738; Mayor *vs.* Cooper, 6 Wall., 847; Water Co. *vs.* Keyes, 96 U. S., 199; Tennessee *vs.* Davis, 100 U. S., 257; Railroad Co. *vs.* Mississippi, 102 U. S., 135).

Jones vs. Florida C. & P. R. Co. et al., 41 Fed. Rep., 70–71.

In the cited case preceding, the court said:

"The plaintiff claims rights, by, and under the acts of Congress for the disposing of public lands, and if he has complied with the laws for that purpose, so as to hold a homestead

or pre-emption right, he is entitled to some remedy in this case. How can this question be determined but by an examination and construction of the land laws, and a determination of the equities existing between the United States and plaintiff?"

41 Fed. Rep., 71.

In *Pierce vs. Molliken*, 78 Fed. Rep., 196 *et seq.*, the plaintiff in an action of ejectment, set up a patent of the United States in his favor. It is true there, there was a denial by the defendant of the validity of this patent, while here it would be assumed, for the sake of argument, that nothing but the original petition can be considered in determining whether or not the case involves a Federal question, but the averment of the petition that a patent had issued to the plaintiffs, that their title had been recognized by the Commissioners of the United States Land Office in their reports and otherwise, and that the land is *illegally* detained and held by the defendant, and this makes a consideration of this patent, and the acts of Congress under which it is issued, absolutely necessary, in order to determine whether or not the patent was valid, or its effect or that of the acts of Congress authorizing it; likewise the petition contains the averment that the Spanish grant and concession, under which the patent was delivered, was recognized and confirmed by the United States, which necessarily involves the validity and effect of such recognition and confirmation. The conclusion of the court in the cited case was, that where the plaintiff claimed under a patent issued by the United States, the validity or binding effect of which was denied, the suit was one arising under the Constitution or laws of the United States, and that this fact alone gave the Federal court jurisdiction; that the plaintiff asserting a right under the laws of the United States was sufficient to show jurisdiction in the circuit court. (See also 167 U. S., 65–72.)

In *Hills vs. Homton*, 12 Fed. Cases, 193, case No. 6508 (4

Sawyer, 195), plaintiff claimed title to the land in controversy, under a patent issued upon a confirmed Mexican grant. While here the plaintiffs claim, under a patent issued upon a Spanish grant or concession, which was recognized by the United States Government, in the cited case, it was held that the case depended upon a controverted construction of the patent, and hence the national courts had jurisdiction irrespective of the citizenship of the parties.

It must appear, that the jurisdiction of the circuit court rested entirely upon the diverse citizenship of the parties, in order that the judgment of the court of appeals may be final. If the jurisdiction of the circuit court, could have been maintained on any ground, besides that of the character of the parties, the judgment of the court of appeals is not final, but is reviewable by writ of error in this court.

This was decided by this court no longer ago than February 23, 1903, in Northern Pacific R. Co. *vs.* Soderberg, pending here on writ of error to review the decision of the circuit court of appeals for the ninth circuit (188 U. S., 528). In the cited case the court said:

"Motion was made to dismiss this appeal for the reason that as the jurisdiction of the circuit court was invoked upon the ground of diverse citizenship that the decree of the circuit court of appeals is final, under section 6 of the court of appeals act of 1891, as interpreted by the decisions of this court, in Colorado Central Mining Co. *v.* Turck, 150 U. S., 133; Bargmeyer *v.* Idler, 159 U. S., 408, and The Press Publishing Co. *v.* Monroe, 164 U. S. 105. But to impress the attribute of *finality* upon the judgment of the circuit court of appeals, it must appear that the original jurisdiction of the circuit court was dependent (*entirely*) upon diverse citizenship. That is not the case here. Plaintiff does indeed set up a diversity of citizenship as one of the grounds of jurisdiction, but as it appears that his title rests upon a proper interpretation of the land grants of 1864, as to the exception of non-mineral lands, there is another ground wholly independent of citizenship; under that clause of section 1 of the act of 1888, 25 Stat., 433, clothing

the circuit court with jurisdiction of all civil suits involving over $2,000.00, 'and arising under the Constitution or laws of the United States.' If the case made by the plaintiff be one which depends upon the proper construction of an act of Congress, with the contingency of being sustained by one construction and defeated by another, it is one arising under the laws of the United States (*Doolan v. Carr*, 125 U. S., 618; *Cooke v. Avery*, 147 U. S., 375)."

188 U. S., 528.

In *Warner vs. Searle & Hereth*, 191 U. S., 195, it was held that where, independent of the citizenship of the parties, the bill disclosed a ground upon which the jurisdiction of the circuit court could be maintained that the judgment of the court of appeals in such a case was not final, but reviewable on writ of error in this court; in this connection the remarks of the court were as follows:

"In the present case, diverse citizenship, and requisite amount existed, and the circuit court, therefore, had jurisdiction, but, it is argued that the jurisdiction depended entirely on diversity of citizenship, and hence that the decision of the circuit court of appeals was final. We think, however, that as infringement of a trade-mark registered under the act was charged, the averments of the bill, though quite defective, were sufficient to invoke the jurisdiction also on the ground, that the case arose under a law of the United States, and will not, therefore, dismiss the appeal."

There is involved in the present case, no constitutionality of any act of Congress, but to pass upon the validity or effect of the patent necessarily involves a construction of the acts of Congress under which the patent was issued; in such a case the judgment of the court of appeals is not final, but is reviewable on writ of error in this court.

Spreckles Sugar Refinery Co. vs. McClain, 192 U. S., 397–410.

In any case where the construction is invoked, by the plaintiff's petition, the judgment of the court of appeals is

not final, and will be taken from that court to the Supreme Court.

Hughes' Federal Procedure, pp. 465 (2).

Where jurisdiction of the circuit court rests, not *alone* on the diverse citizenship of the parties, but also on a Federal question, the jurisdiction of the circuit court of appeals is not final, but subject to review, on a writ of error, from the Supreme Court.

Huguly Manfg. Co. vs. Cotton Mills, 184 U. S., 290.

It has been held that a Federal question was presented, if it appeared from the plaintiff's statement of facts, by a construction which may be fairly claimed and contended for, of a provision of a statute, would defeat plaintiff's right of recovery.

State of Minnesota vs. Duluth, 87 Fed. Rep., 497.

As a Federal question must be presented by plaintiff's own statement of his case, the jurisdiction of the circuit court on this ground must depend entirely upon what might be fairly and reasonably claimed under the allegations thereof, not what the defendant might subsequently actually make.

The allegation here being, that the authors of the title of plaintiffs' ancestors acquired from the United States by the confirmation of a Spanish grant, and that a patent had issued to the plaintiffs from the United States, after due recognition of their rights, by the Land Office, would afford the basis of a plausible and reasonable claim, that a fair interpretation or construction of the acts of Congress, by which such concession was made or patent issued, would defeat plaintiffs' claim for recovery.

It would thus appear that this case is one arising under the Constitution and laws of the United States, from plain-

tiffs' own statement of their claim, whatever might be the contention or claim of the defendant.

In such a case this court has the power not only to hear and determine the cause, but has the right to decide every issue that may be subsequently raised, whether the decision of the case ultimately turns on the question of Federal, local, or general law, this being a matter which in nowise affects the jurisdiction of the case.

N. O., etc., R. R. Co. vs. Mississippi, 102 U. S., 135–141.
Tennessee vs. Davis, 100 U. S., 257.

The rule that a Federal question must appear from the plaintiff's pleadings, will not be permitted to defraud the Federal courts of jurisdiction; accordingly, a suit against a receiver of the Federal court is removable, though the fact as to the appointment is not stated in the complaint.

Winter vs. Drake, 102 Fed. Rep., 545.

It has been held that where it was necessary to determine the meaning and effect of an act of Congress under which a patent issued the case was one of which the Supreme Court had jurisdiction.

French-Glenn, etc., Co. vs. Springer, 185 U. S., 47–54.

Respectfully submitted.

BRANCH K. MILLER,
Attorney for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 50.

FERNAND BONIN, ET AL., PLAINTIFFS IN ERROR,

versus

THE GULF COMPANY. DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF PLEADINGS

This is an action in ejectment. It was originally brought by the Heirs of Gonsoulin, plaintiffs, against the defendant, a New Jersey corporation, in the District Court of St. Mary Parish, in the State of Louisiana, where the land claimed is situated, and was by the defendant removed to the Circuit Court of the United States.

In the original petition the plaintiffs, the Heirs of Francois Gonsoulin and his wife, stated their claim as follows (R., p. 3):

> "Petitioners now show that said Francois Gonsoulin, their grandfather and his wife, owned, at their

death, the right to a grant of land described as follows, as per surveys and confirmation since made, to-wit:

"A tract of land called Belle Isle, consisting of section nineteen (19), township seventeen (17) south, range eleven (11) east, nineteen hundred and eighteen and 75-100 acres. Section twenty-eight (28), township seventeen (17) south, range ten (10) east, nine hundred and seven and 63-100 acres. Section one (1), township eighteen (18) south, range ten (10) east, one hundred and thirty-seven and 76-100 acres. And section two (2), township eighteen (18) south, range ten (10) east, sixteen and 44-100 acres. All lying in the Parish of St. Mary, fronting on Wax Bayou and lying on the Atchafalaya Bay, in the Southwestern Land District of Louisiana, Parish of St. Mary.

"All said tract being contiguous and forming originally a grant from the Spanish Government or concession therefrom during the time when Louisiana formed a part of the dominions of Spain in America, said grant or tract described containing in the aggregate twenty-nine hundred and eighty and 58-100 acres, or thereabouts. Your petitioners show that the grant or concession above-mentioned to the property described was originally made and allowed to Dautrive Dubuclet, Benoist de St. Clair, and the Francois Gonsoulin afore-mentioned, as grantees, about the year Anno Domini seventeen hundred and eighty-three (1783), all of said grantees then residing in the province of Louisiana.

"Petitioners show that by legal and proper transfers by said Dautrive Dubuclet and said Benoist de St. Clair and their heirs, that the right and interest of the last two mentioned grantees and their heirs in and to said lands described have been and are now

vested in your petitioners as heirs of Francois Gonsoulin and his said wife, said transfers having been made since the year eighteen hundred and eight (1808), when Louisiana was acquired by the United States of America.

"Your petitioners further show that all said original grantees have been long since dead, and that a patent has issued to the heirs of Francois Gonsoulin to the lands aforesaid from the Government of the United States, after due recognition of their rights by the Commissioners of the Land Office of the United States

"Petitioners further show that their said rights to said lands are recognized in the Commissioner's reports, now in the United States Land Office, of the year eighteen hundred and seventy-five or about the year eighteen hundred and seventy-five.

"Petitioners show that their claim by said grant and concession covering said lands dates back to the year seventeen hundred and eighty-three (1783) or thereabouts, and said concession was recognized and confirmed by the United States Government *after proper and legal surveys had defined the boundaries and segregated said grants.*"

When the case reached the United States Circuit Court, defendant pleaded that the alleged heirship of the plaintiffs and their source of title were too vaguely set forth to be traversed (R., p. 9.) Plaintiffs then met this plea by a supplemental petition, which reads like a transcript of the records of the Parish Church of an Acadian Parish, setting forth their heirship and how they claim title to the land held by the defendant, originally granted by the Spanish Government in 1783 to

Francois Gonsoulin, Dautrive Dubuclet and Benoist de St. Clair, and patented by the United States to these persons on August 21st, 1878. In this petition a list of new plaintiffs appear, who join the original plaintiffs, and they pitch their title solely on the patent granted in 1878.

The defendant for peremptory exception pleaded, first, the prescription of ten years; second, the prescription of thirty years; and, third, *res adjudicata*, the latter plea being based on a suit brought in 1822 by the ancestors of all the plaintiffs against Walter Brashear, under whom defendant claimed title (R., p. 20).

Defendant thereafter appeared and disclaimed title and possession of all that portion of the property claimed in plaintiff's petition lying East of Doctor's Bayou, being all that portion of Section 19 of Township 17 South, Range 11 East, lying east of said bayou.

The cause came on to be heard on these pleas and the Court charged the jury peremptorily to find for the defendant on its pleas of prescription, and to non-suit the defendant on its plea of *res adjudicata*.

Verdict was entered accordingly, and the plaintiffs took a writ to the Circuit Court of Appeals for the Fifth Circuit which affirmed the judgment. The opinion of that Court is reported under the title of Gonsoulin Heirs vs. The Gulf Company, 116 Federal Reporter, page 251.

There was not before the Circuit Court any question except the question of prescription and the question of *res adjudicata*. There was a non-suit against the defendant on the plea of *res adjudicata*.

In the Circuit Court of Appeals there was no

question but that of prescription, and there is no other question here.

As stated above, the defendant pleads two separate prescriptions, that of ten years and that of thirty years. The law of Louisiana on the subject of these two prescriptions is found in the following articles of the Civil Code:

Art. 3473. The ownership of immovables is acquired by a longer or shorter time, accordingly as the possession has been in good or bad faith, as laid down in the following paragraph.

Art. 3474. Immovables are prescribed for by ten years, when the possessor has been in good faith and held by a just title during that time.

Art. 3475. Immovables are prescribed for by thirty years without any title on the part of the possessor, or whether he be in good faith or not.

Art. 3478. He who acquires an immovable in good faith and by a just title, prescribes for it in ten years.

Art. 3479 To acquire the ownership of immovables by the species of prescription which forms the subject of the present paragraph, four conditions must concur:

1. Good faith on the part of the possessor.

2. A title which shall be legal, and sufficient to transfer the property.

3. Possession during the time required by law, which possession must be accompanied by the incidents hereafter required.

4. And finally an object which may be acquired by prescription.

Art. 3480. The good faith spoken of in the preceding article is defined in the chapter which treats of possession.

Art. 3481. Good faith is always presumed in matters of prescription; and he who alleges bad faith in the possessor must prove it.

Art. 3482. It is sufficient if the possession has commenced in good faith; and if the possession should afterwards be held in bad faith, that shall not prevent the prescription.

Art. 3483. To be able to acquire by the species of prescription mentioned in this paragraph, a legal and transferable title of ownership in the possessor is necessary; this is what is called in law a just title.

Art. 3484. By the term *just title* in case of prescription, we do not understand that which the possessor may have derived from the true owner, for then no true prescription would be necessary, but a title which the possessor may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the ownership of the property.

Art. 3485. And in this case, by the phrase *transfer of the ownership of the property*, we understand not such a title as shall have really transferred the ownership of the property, but a title which by its nature, would have been sufficient to transfer the ownership of the property, provided it had been derived from the real owners, such as a sale, exchange, legacy or donation.

Thus, prescription could not be acquired under a title resulting from a lease or loan, because these contracts do not transfer the ownership of the property.

Art. 3486. It is necessary besides:

1. That the title be valid in point of form; for if the possession commenced by a title void in that respect, it cannot serve as a foundation for prescription.

2. That the title be certain; thus, every possessor who cannot fix exactly the origin of his possession, cannot prescribe.

3. That the title be proved; for as it consists in a fact it is not presumed, and every man who founds his title on a written instrument must produce it, or prove the contents, if it be lost.

Art. 3487. To enable one to plead the prescription treated of in this paragraph, it is necessary that the possession be distinguished by the following incidents:

1. That the possessor shall have held the thing in fact and in right, as owner; when, however, it is only necessary to complete a possession already begun, the civil possession shall suffice, provided it has been preceded by the corporal possession.

2. That the possession shall have been continuous and uninterrupted, peaceable, public and unequivocal; a clandestine possession would give no right to prescribe; but he who possesses by virtue of a title cannot be considered as a clandestine possessor, for his title leads to the supposition that the possession commenced in good faith, and that is sufficient to enable him to plead prescription.

Art. 3492. The actual possessor, when he proves that he has formerly been in possession, shall be presumed also to have been in possession in the intermediate time.

Art. 3493. The possessor is allowed to make the sum of possession necessary to prescribe, by adding

to his own possession that of his author, in whatever manner he may have succeeded him, whether by an universal or particular, a lucrative or an onerous title.

Art. 3494. By the word *author* in the preceding article, is understood the person from whom another derives his right, whether by a universal title, as by succession, or by particular title, as by sale, by donation, or any other title, onerous or gratuitous.

Thus, in every species of prescription, the possession of the heir may be joined to that of the ancestor, and the possession of the buyer to that of the seller.

Art. 3496. We do not consider as an interval between two possessions, that which takes place between the decease of the testator and the acceptance of the succession by the heir; the possession of the deceased being considered in law as continued in the person of his heir.

Art. 3499. The ownership of immovables is prescribed for by thirty years without any need of title or possession in good faith.

Art. 3500. The possession on which this prescription is founded must be continuous and uninterrupted during all the time; it must be public and unequivocal, and under the title of owner.

Art. 3501. The possession necessary for this species of prescription, when it has commenced by corporal possession of the thing may, if it has not been interrupted, be preserved by external and public signs, announcing the possessor's intention to preserve the possession of the thing, as the keeping up of roads and levees, the payment of taxes, and other similar acts.

Art. 3503. How favorable soever prescription

may be, it shall be restricted within just limits. Thus, in the prescription of thirty years, which is acquired without title, it extends only to that which has been actually possessed by the person pleading it.

STATEMENT OF FACTS

The facts shown on the trial of the case are undisputed, and are as follows:

In 1783 the Spanish Government granted to Dautrive Dubuclet, Benoist de St. Clair and Francois Gonsoulin, an Island called "Belle Isle" on the Bay of Chafalaya, about four leagues west of the mouth of the Chafalaya and about thirty-two leagues from Attakapas, said Island containing about one league in front by the ordinary depth. (R. p. 66).

The grant was made to enable the grantees to raise hogs for the purpose of supplying New Orleans with pork.

The grantees never raised any hogs or furnished any pork, never occupied the property granted, or exercised any ownership over it.

The grant directed the Surveyor General to put the parties in possession of the island, confining them to the front and depth specified in their petition for the grant. There is nothing to show that this order of survey was ever executed, or that the grantees ever had any occupancy of the island.

On July 30th, 1802, an order of survey was issued by Moralis, Intendant of the Province of Louisiana, for 371 superficial arpents, in favor of Samuel Watson, on

the Island known as Belle Isle, in the County of Attakapas, in the bay of Chafalaya. This land was surveyed by Carlos Trudeau, the Surveyor General of the Province, on November 8th, 1802. Watson, the grantee of this grant, made a settlement on this property prior to December 20th, 1803, and thereafter remained in possession until his title was divested by a judicial sale made to John N. Kershaw, by the Parish Judge of Attakapas Parish, which was the name of the Parish in which the land was then situated, on February 27th, 1808, the formal deed of the Judge being dated July 25th, 1809. (R. p. 32). In this deed the property is described as the tract or parcel of land known by the name of "Belle Isle," situated near the mouth of the Chafalaya, and the sale was made of "all the above described tract or parcel of land, situated as aforesaid, containing the whole island of fifteen hundred acres, more or less."

On July 24th, 1809, J. N. Kershaw, the purchaser at this judicial sale, sold this property by warranty deed to Henry Johnson by the same description (R., p. 34).

On August 5th, 1809, Henry Johnson sold this property by a quit-claim deed to Walter Brashear, describing it as a certain tract or parcel of land called "Belle Isle," situated near the mouth of the River Chafalaya, in the territory aforesaid, supposed to contain about 1,500 acres.

Walter Brashear, claiming under Samuel Watson, presented his claim for Belle Isle Island to the Board of Land Commissioners appointed to examine, confirm and

report on titles in Louisiana, under the Act of Congress, approved March 3rd, 1807.

On July 22nd, 1811, the said Board confirmed this grant absolutely, as they had the power and were directed to do under said act as to all persons who were in actual possession of property under grants from the Spanish or French Governments prior to December 20th, 1803. This confirmation describes the land as a tract containing 371 superficial arpents, equal to 313.19 American acres, described as situated in the County of Attakapas, on the Island known by the name of "Belle Isle," in the Bay of Chafalaya (R., p. 63).

Walter Brashear remained in possession of the whole of Belle Isle Island, as owner and possessor, until he died in 1860. For many years prior to 1840 he made this Island his home. His wife and four of his children are buried there.

The natural boundaries of the Island are Wax Bayou, on the north and west; Doctor's Bayou, on the east; and Atchafalaya Bay, on the south. All of the land in these limits, consisting of about 400 acres of high land, and 1500 to 2400 acres of trembling prairie or marsh land, has always been known as "Belle Isle." The land within these limits is what the defendant now possesses and claims, and what all its predecessors in title and possession have claimed and possessed since 1809.

After Doctor Brashear's death, in 1860, the property passed into the possession and ownership of his heirs.

On April 24th, 1869, "Belle Isle Island" was sold,

together with other property, by the United States Marshal of the District of Louisiana, to R. B. Lawrence, under a writ of *fi-fa* issuing from the Circuit Court of the United States, in the case of E. Warfield, et al., vs. the Heirs of Walter Brashear, No. 161 of the docket of the U. S. Circuit Court, and on April 30th, 1869, the Marshal executed his deed for the same in due form of law, which was recorded in the Parish of St. Mary on June 15th, 1869 (R., p. 36).

In this deed, the property is described as a "tract of land fronting on Wax Bayou and Atchafalaya Bay, in the Parish of St. Mary, containing 400 acre of land, more or less, and known as "Belle Isle Island."

Under this deed, R. B. Lawrence went into possession of this land, as above described, *i. e.*, the whole Island bounded by Wax Bayou, Atchafalaya Bay and Doctor's Bayou, and remained in possession thereof, as owner, and in good faith, until July 20th, 1892, when he sold the same to R. B. Withers (R., p. 40).

In the deed from Lawrence to Withers, this property is described as a certain tract of land called "Belle Isle," situated, lying and being in the Parish of St. Mary, State of Louisiana, bounded on the west by Wax Bayou, upon which said Island fronts, and on the south by Atchafalaya Bay, and on the east by Doctor's Bayou, containing 400 acres of high land, more or less, and twenty-four hundred acres sea marsh, or pasture lands, in all twenty-eight hundred acres, more or less.

No demand was ever set up for this property by

any of the Gonsoulins during the twenty-three years it was in the possession of Lawrence. He never heard of their claim until he came to sell the property to Withers, in July, 1892, when it was discovered that in 1878 they had obtained from the United States a patent based on their old Spanish Grant, which had been adjudged against them in a suit brought by their ancestors against Walter Brashear, in 1822, which patent they had recorded in the Parish of St. Mary in 1887 (R. p. 102).

Both Lawrence's lawyer and the lawyer of Withers pronounced this claim null and void.

Withers went into possession of the Island, as above described, and held it as owner, in person, and by his tenants, and in good faith until May 15th, 1897, when he sold it to G. A. Dorwin.

A. F. Lucas, who, under a contract with Withers, had an interest in the mineral rights in the Island, sold his interest to Dorwin, by deed dated May 17th, 1897.

Withers made his home on the Island and was living there with his wife when Dorwin bought.

Dorwin went into possession of the whole Island, and lived there, conducting borings and examinations for minerals. The title was examined for him by his counsel, Messrs Farrar, Jonas & Kruttschnitt, who declared the same perfect.

None of the Gonsoulins ever made any claim to this property either as against Withers or as against Dorwin.

On March 31st, 1898, Dorwin sold the whole Island, as above described, to the Gulf Company, of New Jersey, the defendant, who went into possession thereon.

On June 30th, 1898, the plaintiffs instituted this suit.

Let us return at this point and trace the acts of the Gonsoulins and others relative to their grant of Belle Island in 1783.

They slept upon this grant, doing nothing under it until the Board of Land Commissioners above referred to was appointed.

They presented their claim for confirmation to this Board.

In their report, dated May 1st, 1815, this Board placed this claim in what was known, under the Act of March 3rd, 1807, as the second class, or Class B, which covered those claims, which, though not embraced by the provisions of the several acts of Congress, ought, nevertheless, in the opinion of the Commissioners, to be confirmed in conformity with the laws, usages and customs of the Spanish Government.

The report of the Commission on this Gonsoulin claim is No. 33, and is found at page 66 of the record.

By Act of Congress of April 29th, 1816, all land claims thus reported by the Commission were confirmed.

On May 1st, 1822, the widow and children of Francois Gonsoulin, then deceased, and one of the two sons of Benoist de St Clair, then deceased, the former claiming by deed the interest of the other heir of Benoist de St. Clair, and the whole interest of Dautrive Dubuclet, brought an action of ejectment against Walter Brashear, to recover Belle Isle Island, averring that he had entered upon said tract of land and taken possession of the same,

alleging, publishing and declaring that the same was his property and that plaintiffs had no right to the same.

The plaintiffs set up as their source of title the Spanish grant of 1783 to Francois Gonsoulin, Dautrive Dubuclet and Benoist de St. Clair and its confirmation by the Government of the United States.

The prayer of the petition was that the court decree that the titles of the petitioner to said land are just and legal, and that Walter Brashear had no title to the same as against the petitioners; that he be perpetually enjoined from setting up any title to the same, and that the Sheriff be directed to put plaintiffs in peaceable possession thereof (R., pp. 73-74).

The defendant, Walter Brashear, appeared and set up his confirmed grant on the order of survey and settlement in favor of Samuel Watson. He claimed the premises by possession under just title and in good faith since July 30th, 1802, and pleaded the prescription of ten and twenty years.

On April 26th, 1825, a judgment was entered in this cause in favor of Walter Brashear, in which it was "ordered, adjudged and decreed that the defendant be forever quieted in the possession of the land and property in dispute against all claims and pretensions in favor of the plaintiffs, according to the limits as fixed by the survey of James L. Johnson, made and returned by order of the court (R., p. 77).

This cause was appealed to the Supreme Court of Louisiana. That court affirmed the judgment below at

the August term, 1826; and its opinion is reported in 5th Martin's New Series, p. 33, and is as follows:

"Porter, J., delivered the opinion of the Court:

"The plaintiffs claim a tract of land in possession of the defendant, who pleads title to it in himself.

"Both parties assert a right to the premises in virtue of orders of survey issued by the Spanish Government, and since confirmed by the Commissioners of the United States. The *locus in quo* is admitted to be the same.

"That of the plaintiff is eldest. It is dated in the year 1783. The petitioners, in their *requete*, state; that the island which they solicit is situated about four leagues to the west of the mouth of the river Chafalaya, and that they wish to obtain a title in order that they may form an establishment, to supply the capital in case of need with pork and bacon.

"The commandant of Attakapas certified that the land solicited is of no value, except for the objects mentioned in the requete. The governor directs the surveyor general to place the petitioners on the land solicited, conformably to their memorial.

"From the issuing of this order of survey up to the time of applying for the commissioner's certificate, in the year 1816, it does not appear that the plaintiffs, or those under whom they claim, ever exercised any acts of ownership over the land in question. They never placed slaves or hogs on it, as they stated in the petition they would do; nor ever paid taxes on it as making a part of their property. An attempt was made on the trial to prove they had complied with the engagements contained in their requete, but the evidence wholly fails to establish it.

"The title of the defendant is founded on an order of survey dated in the year 1802. An actual survey

of the premises was made. An actual settlement took place, and with the exception of three or four years' absence, during which time taxes were regularly paid, the land has been inhabited up to the commencement of this suit.

"The government of the United States have relinquished their title to both, and the parties, so far as their rights may depend on any sanction from that source, stand with equal pretensions before the court. They are, therefore, both thrown back on their titles, under the former government. If these titles were complete grants, their date would decide the question, for the title having once passed from the sovereign to the subject, he could not grant it to another. But the orders of survey on which each of the parties claim, left the title or dominion of the soil vested in the government. They furnished an equitable right to those in whose favor they issued, to demand a title of the grantor, but nothing more; a reference to the various negotiations made by the Spanish authorities during the time Louisiana was possessed by that government, we think clearly shows, that the dominion of the soil was not to be considered as vested in the person applying for land, until the grant issued. The government of the United States, when they took possession of the country, by requiring all those who had inchoate titles to present them for approval, showed that they considered they required confirmation and a patent to vest the title.

"As, therefore, the legal title was not vested in either plaintiff under the former government, their rights must be decided by ascertaining which of them had the strongest equitable one, or, in other words, which of them, according to the laws, usages and customs prevailing while that government had pos-

session of Louisiana, would have had the best right to the premises.

"We think there cannot be a doubt the defendants would. The policy of the Spanish government, as is well known, was to invite emigration and promote the settlement of the country. All the general regulations in relation to land in the province and almost every order of survey they issued, proves that the motives just mentioned were the ruling ones. Repeated proclamations of the governors declared all orders of survey null, the land conceded in which was not settled within a limited time. The plaintiff's pretensions tried by this test are entirely defective. In 1783 their ancestor applied for the land, and held out to the government as an inducement to grant it, that it was unfit for any other purpose but that of raising hogs, and that if given to him he would proceed to place slaves and swine there to succor the capital with meat of that kind. During the space of nineteen years that elapsed from the granting this order of survey until the issuing the second he failed to comply with the promise. It was not surveyed, nor settled, nor even taxes paid on it. Under such circumstances, as there was no legal obligation on the part of the government to issue a grant for the land, we are satisfied there was no moral one. And we are of opinion that if the parties now before us were each claiming a title from the Spanish Government had it remained here, and contesting the validity of each other's pretensions, that the title of the defendant would prevail.

"This opinion renders it unnecessary to examine the question of prescription.

"It is therefore ordered, adjudged and decreed, that the judgment of the District Court be affirmed with costs."

Nothing of this record remains except the judicial record now existing in the Parish of St. Mary. The original record and all its documents are all gone, and the record in the Supreme Court was burned. Only the reported opinion remains, which was offered in evidence and made part of the record (R., pp. 26 and 83).

After this decision in 1826, the Gonsoulins remained quiet for fifty-two years.

In the meantime, in the winter of 1837 and 1838, the U. S. Deputy Surveyors, A. F. Rightor and Andrew McCullom, surveyed townships 17 S. of R. 10 E., and 17 S. of R. 11 E., the division line of which passes through the middle of Belle Isle Island, and they surveyed and laid off the confirmed grant No. 33 in the Commissioner's report, to Gonsoulin and others.

As these surveyors took no notice of the confirmed grant to Walter Brashear to part of the same property covered by the Gonsoulin grant, although both grants and confirmations were on file in the Surveyor General's office, we must presume that they surveyed this Gonsoulin grant by the request and on the demand of those parties.

The field notes of this survey, thus made by Rightor and McCullom, were approved on August 1st, 1838, by H. T. Williams, Surveyor General of Louisiana (R., pp. 105 and 106).

The official maps of these townships were made up on these field notes, thus approved, showing conspicuously on their face the surveyed and confirmed grant to Gonsoulin and others under the Commissioners' Report

No. 33, and these official maps were approved by the Surveyor General of Louisiana on December 8th, 1842, and a copy thereof sent to the General Land Office and another copy to the Register's Office on December 31st, 1842, as appears by superscriptions on the official maps themselves. See map annexed to addition to record, between pages 2 and 3.

At the end of these fifty-two years' sleep, the plaintiffs on April 22nd, 1878, procured from O. H. Brewster, then Surveyor General of Louisiana, a copy of the survey of Rightor and McCullom made in 1838, and approved in 1842, made by them of confirmed claim No. 33 in favor of Gonsoulin and others, taken from the approved township map and from the field notes of these surveyors, then on file in the office of the Surveyor General, and on presenting the certificate of such survey to the Patent Office in Washington, they obtained a formal patent for such grant dated August 21st, 1878 (R., p. 101).

It appears on the face of the patent that the plat and survey was that taken from the approved field notes of A. H. Rightor and Andrew McCullom, Deputy Surveyors (R., p. 101).

There never was any other survey of this property or any other field notes, except the survey and field notes of Rightor and McCullom in 1838, and their survey was the basis of the patent.

As stated above, the field notes of this survey were approved by the Surveyor General of Louisiana in 1838, and the map into which they were incorporated was ap-

proved by the Surveyor General in 1842, and copies thereof transmitted to the General Land Office and to the Register's Office on December 31st, 1842.

After getting this patent, the plaintiffs laid down and slept for nine years more, and then woke up to put this patent of record in the Parish of St Mary on June 20th, 1887 (R., p. 102).

They then took another nap of eleven years, five months and ten days, and aroused themselves on June 30th, 1898, to bring this suit.

In this interval of seventy-two years which elapsed between the decision of the Supreme Court of Louisiana in 1826 and the filing of this suit in 1898, they never at any time, or in any manner set up the slightest claim or demand against the owners or possessors of Belle Isle.

An inspection of the Township map and the survey of Rightor and McCullom shows that the survey of the grant to Gonsoulin and others was made so as to locate part of the grant beyond the limits of Belle Isle Island, because the grant, as these surveyors interpreted it, was of a league front with the usual depth. When this league came to be measured off it stretched beyond the limits of the Island and took in all that portion of Section 19 which lies east of Doctor's Bayou, one of the natural boundaries of the Island. For that reason defendant, who never had any title or possession of anything except the Island proper, entered a disclaimer as to this part of Section 19, East of Doctor's Bayou, and the judgment in behalf of the defendant followed this disclaimer (R., p. 116).

In the absence of the survey mentioned in the judgment above quoted, rendered in 1826, made by Johnson, under the direction of the Court, we can only conjecture that it developed the same facts as those shown by the survey of Rightor and McCullom, *i. e.*, that plaintiff's grant, as surveyed, went beyond the limits of the Island, and that defendant set up no claim or title to what lay outside of the Island. The very fact that Brashear, the defendant in such case, continued in uninterrupted possession of the whole Island, as owner, for 35 years after such decision was rendered, and his heirs and their transferees have remained in such possession for thirty-eight years longer, is quite conclusive evidence as to what the Johnson survey was.

ARGUMENT.

The deeds offered in evidence by the defendant in this case were offered (1) in support of the plea of prescription of ten years; (2) in support of the plea of *res adjudicata;* and (3) in support of the plea of prescription of thirty years; not in the latter case to show title, but to show possession and the circumstances of such possession. Therefore, when we consider the plea of thirty years' prescription, we deal with these deeds, not as titles, but as proof of the circumstances of our possession. From that point of view, it appears that the whole of Belle Isle Island was sold at judicial sale in 1808, and adjudicated to John N. Kershaw, and that the Parish Judge, in confirmation of said sale, gave Kershaw

a deed, in due form of law, in July, 1809, which deed was for the whole of the tract of land known as Belle Isle Island, containing 1500 acres, more or less. It further appears that John N. Kershaw, by warranty deed, in 1809, sold all that certain tract of land called the "Island of Belle Isle," containing 1500 acres, more or less, unto Henry Johnson, and that Henry Johnson, by a quit-claim deed, in August, 1809, sold all his right, title, interest and claim in and to a certain tract or parcel of land called Belle Isle Island, supposed to contain about 1500 acres.

The suit brought, as aforesaid, by the heirs of Gonsoulin in 1822 sets up their title to a certain Island, called Belle Isle of about one league in front, from northeast to southwest, with ordinary depth, surrounded by bayous and tumbling prairies, and avers that Walter Brashear has entered upon the said land and taken possession of the same, alleging and publicly declaring that the same is his property, and that petitioners have no right to the same.

This, of course, is a judicial admission made by the ancestors of the plaintiffs in 1822 that Walter Brashear was then in possession of the whole of this Island, as claimed by the plaintiffs, claiming it as his property. This judicial admission was followed by a judgment by which the plaintiffs, as the heirs of their ancestors, are absolutely bound, and this judgment confirms Walter Brashear in the title and in the possession of this property, as against the claim of the plaintiff's ancestors. These facts, taken together with the evidence in the record, make it conclusive proof that Walter Brashear was

in possession of the whole Island in 1822, holding the same adversely to the plaintiffs, and the evidence further shows that Walter Brashear remained in possession of said property uninterruptedly, and as owner, until his death in 1860, and that it remained in the possession of his heirs uninterruptedly, and as owners, until 1869, when it was seized and sold by the United States Marshal under a decree of the Circuit Court against them, at which sale Lawrence became the purchaser, who remained in uninterrupted and undisputed possession of the same until he sold the property twenty-three years later in 1892 to Withers. Withers remaining in possession uninterruptedly until 1897, when he sold to Dorwin, Dorwin remaining in possession until 1898, when he sold to the defendant.

It is shown, without question, that this possession was open, notorious, uninterrupted, and was a possession as owner, and that such possession covered the whole of the property known as Belle Isle Island, bounded by Wax Bayou, Atchafalaya Bay and Doctor's Bayou.

BOTH PLEAS OF PRESCRIPTION ARE GOOD:

First: The Plea of Ten Years' Prescription. The Marshal's deed to Lawrence of 1869 was a deed translative of property. It is argued: (1) That this deed is not a just title under the law of Louisiana; and (2) that it did not cover the whole property.

As to the first proposition, it is only necessary to say that it has long been settled in Louisiana that both a Sheriff's and a Marshal's deed, under a *fi-fa*, issued

under a judgment, are a just title, within the terms of Articles 3478 and 3485 of the Revised Civil Code. See Walden vs. Canfield, 2 Rob., page 466, which is the case of a Marshal's deed. Leduf vs. Bailly, 3 Ann., page 8, which is the case of a Sheriff's deed.

It would be, indeed, an intolerable condition of law, if the purchaser at an execution sale did not have a just title translative of property which would enable him to prescribe like any other title holder, but must be placed on the same plane as the trespasser and the wrongful holder and could only prescribe by thirty years' possession.

This deed is in the usual form of Marshal's deeds, and conveys the property. It declares that "I, the said Marshal, in consideration of the premises, and by virtue of the law in such case made and provided, *do sell and transfer the said before-described property* (with the exception above noted), *to the said Robert B. Lawrence,* and all the rights and titles which the said heirs of Walter Brashear had in the said before described property. To have and to hold the same to the said Robert B. Lawrence, his heirs and assigns forever" (R. p. 39).

As to the second proposition, the language of the deed describing the property is "a tract of land fronting on Wax Bayou and Atchafalaya Bay, in the Parish of St. Mary, containing 400 acres of land, *more or less, known as Belle Isle Island.*" Under the law of Louisiana, as set forth in Articles 2491-92-93-94 of the Civil Code, this deed carried title to the whole Island, irrespective of the number of acres which it contained, whether more or less

than 400 acres. These articles refer to a sale made by act and deed of the party, but the principles therein enunciated also apply to sales at auction and to judicial sales. These articles govern the cases where there is more or less acreage contained in the property which is sold, than is set forth in the agreement. The title to all of the property passes by the act of sale, and Article 2498 restricts the right of action for supplement of the price on the part of the seller, or for any diminution of the price or for the canceling of the contract on the part of the buyer, to one year from the day the contract is made.

Under these articles, there can be no doubt, as above stated, that the title to the whole of Belle Isle passed to the purchaser at Marshal's sale. The property was sold for a lump sum as a tract of land containing 400 acres, more or less, known as Belle Isle Island. It was not sold at so much per acre with a designation of the acreage.

This case is covered exactly by the terms of Article 2494, which says "that in all other cases, whether the sale be of a certain and limited body, or of distinct and separate objects, whether it first set forth the measure, or the designation of the object, followed by its measure, the expression of the measure gives no room to any supplement of price, in favor of the seller, for the overplus of the measure; neither can the purchaser claim a diminution of the price on a deficiency of the measure, unless the real measure comes short of that expressed in the contract, by one-twentieth part, regard being had

to the totality of the objects sold; provided there be no stipulation to the contrary."

It thus appears that under this Article no relief whatever is given to the seller for the overplus of measure in the specific thing sold. The buyer alone is given relief where the measure falls short

The evidence shows that under this deed Lawrence was put into possession of the whole of the Island, and the certificate annexed to the depositions of R. S. Withers, found on page 93 of the record, signed by the heirs of Walter Brashear, shows how they understood the deed to R. B. Lawrence. Lawrence was in possession of this property for twenty-three years under this deed, before he sold to Withers, and before he ever had any knowledge of the claim of the Gonsoulin heirs.

Second: THE PRESCRIPTION OF THIRTY YEARS. Even if we start with the year 1827, and consider Walter Brashear in possession of this property only from the date when the decision of the Supreme Court in the case of Gonsoulin against Brashear, became final, Walter Brashear and his heirs and transferees were in possession of said property, as owners, without dispute, openly and notoriously for seventy-two years before plaintiffs brought this action.

But the plaintiffs claim that the statute of limitations could not run against them until they got their patent from the Government of the United States in August, 1878. Even if we should grant the correctness of this claim that R. B. Lawrence's prescription could not run against them until 1878, yet such prescription was com-

plete in 1888, nearly ten years before this suit was brought. But this claim that prescription did not run against them until 1878 is without foundation in law, for two reasons:

First: In the case of confirmed grants, like the one in question of a specific tract of land, it is settled jurisprudence of the United States and of the State of Louisiana, that the provisions of the law of confirmation relative to survey and patent add nothing but a muniment to the title; that the grant completes the title, and not the survey and patent.

Langdeau vs. Hanes, 21 Wall. 521.

Morrow vs. Whitney, 95 U. S. 551.

Whitney vs. Morrow, 112 U. S. 693.

Joplin vs. Chachere, 122 U. S., p. 94.

The last mentioned case is the exact counterpart of the case at bar, and is based just as this case is based upon a Class B claim, reported by the Commission, under the Act of March 3rd, 1807, and confirmed by the Act of Congress of April 29th, 1816. The arguments advanced by the plaintiff in that case are the same as those advanced here. The authorities relied on are the same. In that case the claim was on a patent which issued as late as 1900 on the confirmed grant of 1816.

The grant of an Island which has a known geographical name at the time the grant is made, and retains that name more than 100 years later, is about as definite and specific as a grant can be.

It has been the settled jurisprudence of Louisiana for many years, that the holder of such a confirmed grant

of an inchoate Spanish title can be prescribed against. Such was the declaration of the Supreme Court of Louisiana in Winston vs. Provost, 6th Ann., p. 166, in which case they maintained the thirty year prescription against the owner of such a title. The same doctrine is laid down by this Court in Langdeau vs. Hanes, *supra*.

Second: Even in cases where a survey is necessary to divest the Government title, such survey when made as the law directs, and approved by the Surveyor, vests the title, and subjects the land covered by such survey to all the duties and obligations of private ownership. See Joplin vs. Chachere, *supra*.

The record shows that there never was any survey made of Belle Isle Island by the officials of the Government of the United States, except that made by Rightor & McCullom in 1838. The approval of the survey of Rightor & McCullom was made by H. T. Williams, Surveyor General of Louisiana, on August 1st, 1838, and is found on pages 105 and 106 of the record, and is in these words:

"SURVEYOR GENERAL'S OFFICE,
"Donaldsonville, August 1st, 1838.

"The foregoing field notes from page 1 to page 76, inclusive, in the Southwestern District of Louisiana, surveyed by A. F. Rightor and A. McCullom, deputy surveyors, under contract of 8th of October, 1837, have been examined and approved.

"(Signed.) H. T. WILLIAMS,
"Surveyor General of Louisiana."

The testimony of the Clerk of the Surveyor General shows that these original field notes are now in the

office of the Surveyor General of the United States, in the State of Louisiana, and the certified copy of so much of said notes as pertained to the survey of Belle Isle, and the adjacent townships, with the approval thereof, was offered in evidence. This Clerk also identified the original official maps of T. 17 S., R. 10 E., and T. 17 S., R. 11 E., in the Surveyor General's Office, and the map now before the Court is a copy of that original map. This map shows that it was made from the approved field notes of Rightor and McCullom, and that no other field notes and no other surveys were ever used to make the map which now stands in the office of the Surveyor General as the official map of those townships. This official map was approved, as stated above, on December 8th, 1842, by W. T. Newcomb, Surveyor General of Louisiana, and copies thereof were sent to the General Land Office and the Register's Office on December 31st, 1842, as appears by inscription on the map. This official map contains this statement: "All the boundaries, section lines, lines of private claims and traverse of this Township were surveyed in the winter of 1837-8 by A. F. Rightor and Andrew McCullom, Deputy Surveyors, under contract of 10th of October, 1837, and were paid for in the third quarter of 1838."

The certificate of Brewster, Surveyor General, offered in evidence by the defendant, and which is copied into the patent, shows that it was made up from the field notes of Rightor and McCullom. It does not purport to approve those field notes, but purports to be such a certificate as the grantee was entitled to get from his

office to make the basis of the patent. If Brewster ever approved the field notes of survey of Rightor & McCullom, his approval would be found on the original field notes, or on the official Township maps, but the certified copies of such field notes and of such Township maps do not show any such approval by Brewster. An examination of the opinion of the Supreme Court of Louisiana in the case of Joplin vs. Chachere, 107 Louisiana, 522, which was affirmed by this court, *supra*, shows that the Counsel in that case used the same argument relative to the certificate sent to the Patent Office at Washington, on which the patent in that case issued, and which is copied into the patent, just as in this case, and that the Supreme Court of Louisiana disposed of the contention in these words:

> "If, however, a survey of the claim was necessary in order to complete the transfer of ownership of this property to Joplin, we are satisfied that a survey of the same was made and approved by the Surveyor General, W. J. McCulloh, as far back as 1856. The present Surveyor General of Louisiana refers to the survey and field notes of Phelps as having been approved, but not as a matter of original approval by himself, as the plaintiff seems to contend."

If, therefore, this private claim, Commissioner's Report No. 33, was surveyed in 1838 by Rightor and McCullom, and that survey approved by the Surveyor General in 1838, then prescription began to run against the plaintiffs and their ancestors either from that date, or from the approval of the township map in 1842, and the

prescription of thirty years was complete in 1872, twenty-six years before this suit was brought.

In their original petition (R., p. 4) the plaintiffs averred "that their claim by said grant and concession covered by said lands dates back to the year 1783 or thereabouts, and said concession was recognized and confirmed by the U. S. Government *after proper and legal surveys had defined the boundaries and segregated said grants.*"

Inasmuch as the only survey shown by the record is that of Rightor & McCulloh in 1838, and inasmuch as their own patent is based on that survey, how can they escape the force of their judicial averment that such survey was "proper and legal," and that it had defined the boundaries and segregated said grant?

Plaintiffs did in 1878 nothing more than what they could have done in any of the years prior thereto and subsequent to 1838; *i e.,* get from the Surveyor General a certificate of the survey of their grant, made in 1838 and then approved, and forward the same to the land office at Washington and get their patent.

Third: The plaintiff's title became complete and absolute by the confirmatory act of Congress of April 29th, 1816 (U. S. Statutes, Vol. 3, p. 328), which declared: "That the claims marked B and described in the several classes in the above-mentioned reports of the commissioners for the Western District of the State of Louisiana, formerly territory of Orleans, and recommended by them for confirmation, *be and the same are hereby confirmed*: Provided, nevertheless, that under no one claim shall

any person or persons be entitled, under this act, to more than the quantity contained in a square league."

The claim thus confirmed by words *in presenti* was for a specific thing—for "an island called 'Belle Isle'" (R., p. 66). In their petition to the Spanish Government the claimants described it as "an island of woods on the Bay of Chafalaya, about four leagues west of the mouth of the Chafalaya, and about thirty-two leagues from Attakapas, which island is surrounded by trembling prairie or marsh."

They represented this island to contain about one league front by the ordinary depth.

No survey of this island was needed under the confirmation unless it should be found to contain more than a square league, because that was the limit of the confirmation. But the survey of Rightor & McCullom, and the testimony in this record show that the Island contained very much less than a square league. In truth and in fact, the complainants under their survey have obtained more than they got under their confirmed grant. They were not entitled to anything but "Belle Isle"—the island of woods surrounded by trembling prairie and marsh. Their survey takes them far beyond the limits of the island to the eastward, and covers all that part of Section 19, East of Doctor's Bayou, which is the bayou running straight north from Lake Belle Isle to Wax Bayou. This part of their survey is what the defendant disclaimed title to. On their survey, and in the township map from which it is taken,

"Belle Isle" is marked and located as west of Doctor's Bayou.

There was no acreage specified in the claim. There was none specified in the report of the commission. The claim was for the island. The confirmation was for the island. The survey was for a league front, with a depth back to Wax Bayou. This league front was a gift from the surveyors and the federal officials who approved the survey, as to all that part of it which extended beyond the limits of the island.

If there is any method by which it can be done, the U. S. Government is to-day entitled to recover from the plaintiffs the gift thus made to them by its officials of all of this survey which lies beyond the limits of Belle Isle.

Under the circumstances above stated, this case falls again on this point under the doctrine declared in Joplin vs. Chachere, *supra*.

The motive for the dissipation at this time of the somnolence of the plaintiffs about their claim to this property appears on the record. A salt mine was discovered on it in 1896, and Dorwin, the vendor of the defendant, paid $125,000 for it (R., pp. 44 and 48). How much the defendant paid for it does not appear.

The conduct of the plaintiffs after they got their patent in 1878, and their silence of 20 years is easily explicable. They got the patent in order to get title to all that part of the survey which went beyond the

limits of Belle Isle, to which they knew they had no title. They were satisfied at that time to take advantage of the misunderstanding by the surveyors of their ancestors' grant, and to rob the government of about 1200 acres of sea marsh. But when the salt mine was discovered on Belle Isle, and strangers came down to exploit it in the shape of a big New Jersey company, and the contingent fee lawyer was at hand to urge them on, the temptation was too strong

We hope that this Court will by its decree put this plaintiff family of Rip Van Winkles to sleep for all time, so that in the next one hundred and twenty-three years they will have no further cause to wake up after long intervals and renew their claims to Belle Isle, as they have at intervals since 1783.

Respectfully submitted,

EDGAR H. FARRAR,
B. F. JONAS,
ERNEST B. KRUTTSCHNITT,
Counsel for Defendant in Error.

Supreme Court of the United States.

No. 50.—October Term, 1904.

Fernand Bonin, Valcour Bonin, et al., Plaintiffs in Error, vs. The Gulf Company. } In error to the United States Circuit Court of Appeals for the Fifth Circuit.

[April 24, 1905.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This was a petitory action for real property, or an action of ejectment, brought by the heirs of Gonsoulin, plaintiffs in error, against the Gulf Company, defendant in error, in the District Court of St. Mary's Parish, Louisiana, where the land was situated. The petition alleged that a grant or concession by the Spanish Government was originally made to Dubuclet, St. Clair and Gonsoulin in 1783, and that the interests of Dubuclet and St. Clair were conveyed to the heirs of Gonsoulin after 1808.

That the United States Government issued a patent to the heirs of Gonsoulin, and that petitioners' "claim by said grant and concession covering said lands, dates back to the year seventeen hundred and eighty-three or thereabouts, and said concession was recognized and confirmed by the United States Government after proper and legal surveys had defined the boundaries and segregated said grants."

That said lands were "now in the possession of and illegally detained and held by the Gulf Company, a body corporate organized under the laws of the State of New Jersey, domiciled in the State of New Jersey."

The Gulf Company filed its petition for the removal of the cause, alleging that it was, at the time the suit was brought, and when the petition was filed, a citizen of New Jersey, and that the heirs of Gonsoulin were citizens of the State of Louisiana. The cause was removed accordingly, and plaintiffs filed in the Circuit Court an amended and supplemental petition, stating that all the plaintiffs were citizens of Louisiana, and that defendant was a citizen of New Jersey, and praying that petitioners "be recognized as the true and lawful owners of the said property described in the patent, letters patent, or grant, issued to Dautrieve Dubuclet, Benoist de St. Clair and Francois Gonsoulin by the United States of America, on August 21st, 1878," and that they be put in possession.

Plaintiffs pitched their title solely on this patent. Defendant for peremptory exception pleaded the prescription of ten years; the prescription of thirty years; and *res judicata*.

On the trial the Circuit Court charged the jury to find for defendant on the pleas of prescription, and non-suited defendant on the plea of *res judicata*. Verdict was returned, and judgment entered accordingly, and the case having been carried to the Circuit Court of Appeals for the Fifth Circuit, the judgment was affirmed. 116 Fed. Rep. 251.

The jurisdiction of the Circuit Court rested alone on diversity of citizenship. The assertion of title under a patent from the United States, presented no question, which, of itself, conferred jurisdiction *Florida Central Railroad Company* v. *Bell*, 176 U. S. 328. No dispute or controversy as to the effect or construction of the Constitution, or of any law, or treaty of the United States, on which the result depended, appeared by the record to have been really and substantially involved, so that it could be successfully contended that jurisdiction was invoked on the ground that the suit arose under Constitution, law, or treaty. *Arbuckle* v. *Blackburn*, 191 U. S. 405.

On the pleadings and evidence, the questions in the Circuit Court were questions of prescription, and of *res judicata;* in the Circuit Court of Appeals, of prescription; and plaintiffs' petitions did not assert, in legal and logical form, or at all, the existence of a real controversy, in itself, constituting an independent ground of jurisdiction.

The judgment of the Circuit Court of Appeals was, therefore, final, and the writ of error must be dismissed.

The judgment was entered in the Circuit Court of Appeals May 27, 1902; this writ of error was allowed May 22, 1903; and the case was docketed here June 1, 1903.

Plaintiffs in error filed a petition for certiorari herein, February 17, 1905, which was submitted February 27, and its consideration postponed to the hearing on the merits. In our opinion that writ should not be granted. *Ayres* v. *Polsdorfer*, 187 U. S. 595.

Writ of error dismissed; certiorari denied.

True copy.

Test:

Clerk Supreme Court, U. S.